America's Relations To The Great War

John William Burgess

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By

John William Burgess, Ph. D., J. U. D., LL. D.

Formerly Professor of Constitutional and International Law and Dean of the Faculties of Political Science, Philosophy, and Pure Science in Columbia University, New York City, Author of "The European War of 1914"

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PREFACE

AS the great World War draws towards its close, our country approaches the crisis of its relation to it and its participation in it.

I do not hesitate to affirm that we have participated in it, although I do not necessarily intend by this that we have not been neutral according to the letter, if not in spirit. What I mean to say is that the exigencies of the war and the negligence of our diplomacy have turned the assistance which we could lawfully render both belligerents alike to the practically exclusive advantage of one, and that the question which we shall have to face at the close of the war, and which we ought to face now before it be too late to change our course, if we have taken the wrong tack, is whether, wittingly or unwittingly, we are or are not aiding that belligerent to victory whose triumph will contribute to the furtherance of our own legitimate interests and the welfare of the world

in times of peace and under normal conditions.

It is with the hope and the purpose of aiding in the solution of this all important question that I have made the effort to add the following pages to my volume on the causes and occasions of the European War published a year and a half ago.*

I have also another purpose. I have observed, with pain and dismay, that the desire for the cessation of the war is apparently weakening, it may even be said is gradually dying out, among a large number of our people.

It is probably true that becoming accustomed to the recital of its horrors has some part in the production of this manifestly growing indifference, but I fear that it is a minor part. I fear that the opportunities which the war affords to make money out of the slaughter, misery, and misfortunes of our fellowmen in Europe constitute the

* *The European War of 1914—Its Causes, Purposes and Probable Results.* A. C. McClurg & Co., Chicago.

main reason of this unnatural and inhuman psychology.

I said to one of the munition venders recently, "This so-called prosperity is partial and ephemeral. The destruction of Europe cannot mean the permanent prosperity of America or the welfare of the world."

He replied flippantly, "I hope and expect the war will last long enough for me to make my pile."

This is simply appalling! The spirit which it manifests is, however, to our everlasting shame and disgrace, rapidly spreading. Let those who are not yet infected by it look it boldly in the face now and brand it with the infamy it deserves, lest, while the nations of Europe come out of the great struggle with diminished populations and depreciated property, we may come out of it as depreciated and degraded men!

JOHN W. BURGESS.

Newport, R. I.
November, 1916.

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AMERICA'S RELATIONS TO THE GREAT WAR

CHAPTER I

WAR BY STARVATION AND SUBMARINE DEFENSE

THE time has at last come when a sane word may be spoken on this subject from an objective point of view with some prospect of meeting, in some quarters at least, with an impartial hearing.

There can be little question now that the original plan of Great Britain for fighting this war was to have France and Russia do the work upon the land of destroying the armies of the Central Powers, while she would starve out their entire population, civil as well as military, women as well as men, infants as well as adults, by means of her superior naval power. She would attack in

this deadly, but safe and subtle, way in the rear, while her allies should endeavor, through blood and carnage, to roll back or pierce through the fronts of stone and trench and steel. At the very outset she did not seem to think that her campaign of starvation would be necessary. She seemed really to believe that the well-prepared and rapidly mobilized armies of France, Belgium, and Russia would be able to bring the war to a victorious close in three months at the most. But when at the end of this period, instead of this speedy triumph, the Russian forces had been driven out of East Prussia and a considerable part of Poland, and the French troops out of Elsass, and the German front on the west had settled down firmly upon that almost impregnable line reaching from Arras to Belfort and including Belgium and the best part of industrial France, then Great Britain resolved to put its starvation plan into operation.

Her Government began, however, with the Orders-in-Council modifying the Declara-

tion of London of February, 1909, which though not ratified by all the Powers was regarded by all as the formulation of existing international maritime law, as far back as August 20, 1914. This Order, as modified by that of October 29, following, increased the items in the list of contraband of war; authorized the seizure of neutral merchant vessels by the British ships-of-war *on their return voyage* after having carried contraband of war to Great Britain's enemies under false papers, that is, upon suspicion of having done so; changed the necessary evidence of the destination of a neutral vessel as carrying contraband of war to the armed forces or the government of the enemy so as to *infer* the same whenever the goods should be "consigned to or for an agent of the enemy state;" subjected conditional contraband to capture if consigned "to order" in a neutral port, or if the vessel's papers did not reveal the consignee, or if they showed a consignee of the goods in territory belonging to or occupied by the enemy; threw the *onus* of

proving innocence of destination on the owners of the goods; and finally subjected to capture all goods consigned to neutral ports, which would be contraband of war only if originally destined for the armed forces or government of the enemy state, in case any member of the British Ministry should declare his conviction that the enemy state was obtaining supplies from the neutral state concerned for its armed forces.

Every one of these Orders was an arbitrary departure from the international usages prevailing on August 1, 1914, and bore even more heavily upon the trade of neutrals with each other than upon the trade of neutrals with Great Britain's enemies. According to these usages, trade between neutrals in all articles is free except only in contraband destined originally for a belligerent, and using the neutral port only for purposes of transshipment or deception, the onus of proving which is upon the party alleging it. Also, according to these usages, trade between neutrals and belligerents in contraband

articles, except through actually blockaded belligerent ports, is free.

Notwithstanding the arbitrary departures from these usages authorized by these Orders-in-Council and their rigorous enforcement, Great Britain found that her plan of starving out Germany and Austria-Hungary was no more successful than the military movements of France and Russia were for crushing their armies and overrunning their territory.

Something even more drastic than this must, in her opinion, be tried. It came to the notorious Admiralty Announcement of November 2, 1914. This is one of the most cunningly devised state papers, which diplomatic history has to record. We will therefore quote its chief pronouncements verbatim. It begins with the bald assertion that —

> during the last week the Germans have scattered mines indiscriminately in the open sea, on the main trade route from America to Liverpool *via* the north of Ireland.

It then continues:

These mines cannot have been laid by any German ship of war. They have been laid by some merchant vessel flying a neutral flag which has come along the trade route as if for purpose of peaceful commerce, and, while profiting to the full by the immunity enjoyed by neutral merchant ships, has wantonly and recklessly endangered the lives of all who travel on the sea.

Further:

In these circumstances, having regard to the great interests entrusted to the British navy, to the safety of peaceful commerce on the high seas, and to the maintenance within the limits of international law of trade between neutral countries, the Admiralty feel it necessary to adopt exceptional measures appropriate to the naval conditions under which this war has been waged. It, therefore, gives notice that the whole of the North Sea must be considered a military area. Within this area merchant shipping of all kinds, traders of all countries, fishing craft and all other vessels will be exposed to the greatest dangers from mines it has been necessary to lay and from warships searching by night and day for suspicious craft. All merchant and fishing vessels of every description are hereby warned of the dangers they encounter by entering this area, except

in strict accordance with Admiralty directions. Every effort will be made to convey this warning to neutral countries and to vessels on the sea, but from November 5, onward, the Admiralty announces that all ships passing a line drawn from the northern part of the Hebrides through the Farne Islands to Iceland do so at their own peril.

The Admiralty directions which all vessels must obey virtually required, thus, all ships to call at a British port for a pilot, who should conduct them through the mine fields.

This document rings false from beginning to end. It starts with an entirely unsupported assertion that the Germans had sowed mines in the northern trade route between America and Liverpool; then in order, it would seem, to save the face of the British Admiralty, claims that it could not have been done by a German war vessel, without explaining why not, and declares that it must have been done by a merchantman under a neutral flag, without even venturing to say anything about the nationality of the merchantman.

Then comes the perfectly preposterous

declaration that, in order to meet this condition and discharge the great world duty resting upon the British navy to protect peaceful commerce, and the trade of neutrals, the British Government transforms the whole North Sea into a war zone, sows it with mines, making commerce impossible, or at least highly dangerous through it, except under the guide of a British pilot taken on by calling at a British port, where, of course, the neutral ship might be detained as long as it might please the British Government and suffer any fate a British prize court might impose upon it. No man of common sense can repress the suspicion that if any mines existed in the northern trade route between America and Liverpool they had been placed there by the orders of the British Government itself, placed there for the purpose of a pretext for cutting off, or rendering most onerous, the trade between the United States and Sweden, Norway, Denmark, and the Netherlands, and interdicting completely the trade between the United States and Ger-

many in non-contraband articles, without actually blockading the German ports, and without the trouble of halting and searching the neutral vessel on the high seas to determine whether or not it carried contraband.

Let us, however, concede that the British Government really believed that a merchant vessel flying the flag of a neutral country strewed mines in the trade route around the north of Ireland between America and Liverpool, would this justify the British Government in declaring the North Sea a war area and planting it with mines? There is, indeed, a *lex talionis* recognized in international law, and a belligerent having recourse to it cannot be properly held to be a law-breaker, provided he exercise his retaliation within natural, rational, and appropriate limits, and exercise it only against his enemy. The usual definition given of legal retaliation is, "the right by which one nation applies, in its transactions with another, the same rule of conduct by which that other is governed under similar circumstances," or which that

other has applied under similar circumstances to the nation retaliating.

This declaration of the British Government of November 2, 1914, does not even undertake to fix upon its enemy, the German Government, the guilt of planting the mines alleged to have been placed in the northern trade route between America and Liverpool. And even had it charged this act upon the German Government and had supported this charge by the most credible and indisputable evidence, still its retaliations went so far beyond the offense as to be illegal and arbitrary.

If mines were planted by order of the German Government in the trade route between America and Liverpool, it was done for the purpose of preventing access to its enemy's ports, and those only. This would warrant, as a proper retaliation, the planting of mines by order of the British Government so as to cut off access to German ports, and only to German ports. But the British Government, by declaring the whole North

Sea a war area and planting it with mines, also cut off access to neutral ports, except under such conditions and directions as the British Government might see fit to impose. Under the most favorable aspect, thus, the British Government cannot escape the charge of having violated, with great arbitrariness, the ordinary usages of nations by declaring the entire North Sea a war area and planting it with mines.

I do not wish to be understood as contending that a neutral may *in no case* suffer an injury from a belligerent without such injury making the act of the belligerent unlawful. If such injury should be incidental to, and unavoidable in, the prosecution of war, according to the rules and usages of civilized nations, by one belligerent against another, it would not stamp the act of the belligerent as illegal. The rules and usages of civilized nations in force on August 1, 1914, forbade the involvement of neutral ports in any measures taken by a belligerent to prevent access to the ports of its enemy, and thus excluded

such injury to the neutral from the category of unavoidable incidental injury.

During the next three months the British Government put these Orders in force with so much rigor as to greatly injure the trade and commerce between the neutral states on the North Sea and all other neutral states, to say nothing of the almost complete cessation of all trade between Germany and these other neutral states. The Germans were compelled to put the distribution of their food supplies under strong governmental control, and it seemed for a time as if the British plan of conquering Germany by starving its civil population had some prospect of success. The German Government now determined to meet the unlawful situation created by the British Government in the North Sea by invoking the *lex talionis* on its part. The German Government issued on the 4th of February, 1915, the following notice:

The waters around Great Britain and Ireland inclusive of the English Channel are hereby declared a war area. From and after the 18th of

February, 1915, every enemy merchantman found in these waters will be destroyed and it may not be always possible to avert the dangers connected with such destruction from the crews and passengers. Neutral ships also run great risks in entering this area, since, because of the misuse of neutral flags ordered by the British Government to be made by the British merchantmen, and because of the accidents connected with maritime war, attacks intended for enemy's ships only may possibly involve neutral vessels. Navigation northward around the Shetland Islands and along the Netherland coast for thirty miles in breadth will not be endangered.

Along with this notice was sent to each neutral government a communication stating the violation of international law committed by Great Britain in her attempt to conquer the German armies by starving the German civil population culminating in a paper blockade of all the North Sea ports, neutral as well as belligerent, and in the substitution, in enforcement of the same, of mine warfare throughout a large area of the high seas for the usual cruiser warfare known to international law, and declaring that Germany

possessed no means of defending her people against this starvation campaign waged with such instruments except retaliation in kind against Great Britain, namely, by proclaiming a war area around the British Islands and substituting submarine warfare for the cruiser warfare known to international law; and finally expressing the hope that the neutral nations would recognize the justice of this retaliation and would endeavor to minimize the hardships of it to themselves by causing their citizens and subjects to avoid the war area both as to person and property.

The first question which presents itself in the scientific consideration of this German proposition is whether it was justified by the British declaration of November 2, 1914, and the British practices under that declaration, and whether the retaliation proposed was within rational limits. The war area proclaimed by the German Government was of about the same extent as that proclaimed by the British Government. It did not, however, apply to neutral ports as did the British

proclamation. It was arranged so as to prevent access to British ports only. Neither was it directed against neutral vessels, carrying innocent cargoes, but only against the vessels of Great Britain and her allies, that is, against the vessels of the enemy. Neutral vessels with innocent cargoes would suffer no intentional injury even though destined to the ports of Great Britain.

Moreover, it must be remembered that the area declared by the German Government to be a war zone corresponds, more or less nearly, with that outlined in the Territorial Waters Jurisdiction Act of the British Parliament of the year 1878, according to which the waters around the British Islands were declared to be subject to the jurisdiction of the British Government beyond the three mile limit usually fixed by international practice to an indefinite distance, to any distance "necessary for the defense and security of the islands." In other words the war area declared by the German Government around the British Islands was, according to British

law, British territory, subject to British sovereignty, and not a part of the high seas at all in which other nations had rights by international law. So far, then, as the extent of the war area declared by the German Government is concerned, it cannot be regarded as exceeding the limits of reasonable retaliation.

The second point to be considered is whether the submarine is a proper retaliation against the mine. Not many words are necessary to demonstrate that it is well within the limits of rationality. The mine can give no notice, save no crew nor passengers, and make no distinction between neutral and belligerent vessels. The submarine can at least make the distinction between belligerent and neutral vessels and spare the latter while destroying the former. No impartial student can, therefore, consider submarine warfare as, in any respect, an excessive retaliation against mine warfare. On the other hand it must be held to be, by a safe margin, well within the proper boundary.

Finally as to the purpose in each case. The aim of the British Government was, without doubt, to starve the German people into submission. But the impartial student of these events is compelled to point out that it reaches still further, and was in all probability intended to reach further. It is working out the acquisition of the trade of neutral nations with the North Sea countries by Great Britain. On the other hand, the aim of the German Government was, first of all, to prevent arms and munitions of war from reaching Great Britain and, secondly, provisions. It did not have in view any capture of, or interference with, the trade between neutral countries. From this point of consideration, lastly, the German retaliation was distinctly inside the limits of the provocation.

So far, then, as her enemies were concerned, Germany's submarine program was entirely legal and proper when tested by the requirements of the *lex talionis,* a well established branch of international law, a branch whose application is constantly

invoked by all belligerents. *What* rights of *neutral* nations might be affected by it and by the British program of closing the North Sea by mine warfare, against which it was the retaliation, *how* they might be affected, and what means the neutral nations would take to redress their injuries and prevent a repetition of them was quite another question.

Already, before the British declaration of the closing of the North Sea appeared, the Government of the United States had sent communications to the British and German Governments announcing that, as the British Government had declined to abide by the Declaration of London during the existing war, the Government of the United States would interpret its rights and duties and those of its citizens in accordance with the general principles of international law and the treaties subsisting between the United States and foreign Powers irrespective of the provisions of the Declaration of London, and would enter " protest or demand in each

case in which the free exercise of those rights and duties so defined might be violated or interfered with."

After the British declaration closing the North Sea had been communicated to the neutral Powers and put into quite vigorous operation, the Government of the United States sent its protest, or rather remonstrance, of December 26, 1914, to the British Government. This is a document not calculated to fan American pride into a consuming flame. Its flattery of Great Britain is without foundation in truth, and passes the limit between courtesy and servility. Its cry for relief is a wail of weakness. And the threatened resistance to farther encroachments upon our trade with neutrals was expressed in the form of a timid suggestion that our people might not continue to feel so friendly and benevolently towards the British cause. It is needless to say that the British Government did not pay the slightest attention to these feeble and debilitated utterances, except, perhaps, to take them as an encourage-

ment to proceed even more vigorously in the work of destroying our foreign trade in part, and acquiring it in part for British merchants. At any rate this is just what it did do.

Moreover, the remonstrance of our Government contained no protest against, or reference to, the action of the British Government making the entire North Sea a war area and planting it with mines, but confined itself wholly to the British practices of seizing American ships and cargoes on the high seas, dragging them into British ports, detaining them indefinitely there, and subjecting them to the jurisdiction and judgments of British prize courts. It was, therefore, not unnatural that the German Government should have expected that the United States Government would not only allow its retaliatory declaration of February 4, 1915, to pass unchallenged, but even to welcome it as helpful in bringing Great Britain to a sense of her lawless course against our general commerce with neutrals and in non-contraband articles with Germany. The state of mind in Wash-

ington in the early days of the month must have encouraged this hope. A special communication from the capital printed in the New York *Times* of February 8, an out and out pro-British journal, reads as follows :

Developments today with respect to the German war zone proclamation indicate that the American Government is not likely at this time to file any protest or make representations to the German Government respecting the enforcement of the German order. The long memorandum delivered by the German foreign office to Ambassador Gerard, explaining the proclamation, has been received at the state department, and the perusal of its text, which was cabled to American newspapers this morning, convinced officials here that at present no issue could be raised with Germany over the creation of the projected war zone without at the same time raising identically the same issue with Great Britain.

Under these circumstances the blow dealt the German Government from Washington on February 10, must have struck it like a bolt out of a clear sky. The United States Government assumed, in this communication,

that the zone around the British Islands, declared by a statute of the British Parliament of the year 1878 to be subject to British jurisdiction and proclaimed by the German Government as a war area, is a part of the high seas; contended that submarine warfare therein must conform to the rules of cruiser warfare on the high seas; asserted that the rights of American citizens, both as to life and property, are the same therein as upon the high seas and subject to no further limitations therein, in behalf of belligerents, than upon the high seas; and threatened to avenge any injury caused by the German submarine warfare to American citizens, as to person or property, therein, whether intentional, accidental, or incidental, with a rupture of friendship and a calling of the German Government to strict accountability therefor. The lamblike meekness and patience of December 26, 1914, had disappeared entirely and the stamp and roar of the lion resounded throughout the diplomatic world.

What could have brought about this

change of attitude regarding American rights upon the high seas in the short period of three days, this unexpected change even within high governmental circles, if we may trust the Washington correspondent of the *New York Times?*

Was it the love of Britain, the desire to help Britain win this war? or was it the fear of Britain? or was it the munition trade? or was it the sudden resolve of the Government of the United States to champion all neutral rights in this war and bring them through it undiminished and unenfeebled? I shall not undertake to say which it was. I would like to think it was the latter, exclusively the latter. But in the way of this stands the difference of tone in which the opposing belligerents were addressed and the imparity of treatment meted out to them.

The German Government replied immediately under date of February 16, expressing the most sincere hope and purpose of avoiding all accidents to the lives or property of citizens of the United States in the prosecu-

tion of its submarine warfare and all misunderstandings with their Government; disavowing all intention of attacking neutral ships or seizing innocent cargoes carried by them; drawing attention again, however, to the imminent dangers which the neutral ships run in an area in which a maritime battle might at any moment occur, especially on account of the abuse of neutral flags authorized by the British Admiralty; suggesting to the United States Government to do something in the way of warning its own citizens against the possibility of such accidents and of convoying their ships through such dangerous waters; and imploring the United States Government to have as much patience with, and indulgence for, a country struggling for its life as with those countries endeavoring to take it. The note of the German Government also declared that from the beginning of the war down to that moment, Germany had followed the well understood and accepted rules of maritime warfare, while Great Britain had constantly violated them;

that the German Government had acceded without delay to the proposition made by the United States Government, in the early days of the conflict, to recognize the provisions of the Declaration of London as the rule of maritime warfare during the war, while Great Britain had refused; that the German Government had, nevertheless, freely adopted these provisions as the prize law of its courts; that the British Government had set aside all of these enlightened provisions in order to subject the German nation to its will by the starvation of its civil population; that the neutral Governments had not insisted effectively upon the rights of their citizens to carry on trade in non-contraband articles with Germany, or generally with each other, while they had left their citizens and subjects in perfect freedom to carry on trade in all articles with Great Britain and her allies; and that while the German Government did not call in question the authority of the neutral Governments to uphold or not uphold the rights of their citizens, it never-

theless felt that, when these Governments upheld the rights of their citizens against one belligerent and allowed them to suffer wrongs from the other, parity of treatment could hardly be claimed. The German Government finally appealed, in this note, to the Government of the United States to cause Great Britain and her allies to recede from their illegal and inhuman course and abide by the Declaration of London in the further prosecution of their maritime warfare and virtually promised to desist from carrying its threatened submarine war against enemy merchantmen into effect, if the efforts of the United States Government to this end should prove successful.

The Government of the United States, recognizing the importance of this proposition to the maintenance of neutral rights and neutral interests, hastened to lay its suggestion of the 22nd of February, 1915, before the British and German Governments. This suggestion contained the following points. First, that floating mines should not be used

by either belligerent; that anchored mines should not be planted in the high seas farther out than the distance of a cannon shot from a harbor, which it might be designed to protect; that these anchored mines should be so constructed as to be harmless in case of breaking loose from their moorings; and that these anchored mines should bear the stamp of the government which employed them. The effect of the adoption of this would have been the re-opening of the North Sea to the trade of the neutral nations and the withdrawal of the British declaration of the North Sea as a war area.

The second point of the suggestion was, that submarines should be employed against merchant vessels only in exercise of the right of visitation and search for contraband of war and its capture or destruction. The effect of the adoption of this would have been the subjection of submarine warfare against enemy merchantmen to the same rules as those binding on cruiser warfare at the outbreak of the war, and the withdrawal

of the German Order proclaiming the waters around the British Islands a war area.

The third point of the suggestion was, that the British Government should agree not to make provisions absolute contraband, and that the German Government should agree that all provisions imported from the United States should be assigned to agents in Germany appointed by the United States Government and distributed by them to licensed buyers for the sole use of the civil population. The same rule should also apply to provisions imported from other neutral countries. The effect of the adoption of this would have been the restoration of the trade of neutrals in non-contraband of war with the Central Empires of Europe.

The suggestion was a sincere attempt to establish the fundamental principles of the Declaration of London and keep maritime warfare within well understood legal bounds in so far as it might touch the rights of neutrals. It was certainly fair to both belligerents. If anything it conceded more to

Great Britain than to Germany. The moment when this suggestion was laid before the British and German Governments was the moment of supreme test in determining the responsibility for the future course of maritime warfare, not only in this war, but perhaps in wars to come, and the party rejecting it will be held by impartial history to be the bearer of the responsibility for all the deeds of both parties in violation of the existing law of maritime warfare.

In less than a week from the time the suggestion was made by the Government of the United States, and in spite of the delays in the transmissions of communications between Washington and Berlin, the German Government had given notice to the Government of the United States of its approval and acceptance of the suggestion, both in principle and in every important detail. The formal reply from the British Government was not handed to the American Ambassador in London until March 15, although both a communication from the British Ambassador in Wash-

ington to the Secretary of State of the United States dated March 1, and the British Orders-in-Council of March 11, bear directly upon the question. The first contained the declaration that the British and French Governments would —

> hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin.

The second proclaimed that —

> no merchant vessel which sailed from her port of departure after the first of March, 1915, shall be allowed to proceed on her voyage to any German port. No merchant vessel which sailed from any German port after the first of March, 1915, shall be allowed to proceed on her voyage with any goods on board laden at such port. Every merchant vessel which sailed from a port other than a German port after the first of March, 1915, having on board goods which are of enemy origin or are enemy property, may be required to discharge such goods in a British or allied port.

This manifestation of utter disregard for the principles of international law and the rights of neutrals was a fit prelude to the

formal answer to the suggestion of the Government of the United States of February 22. This formal answer was handed to the American Ambassador in London by Sir E. Grey on March 15. It undertakes to represent the reply of the German Government to the suggestion as not being an acceptance of it, and then goes on to accuse the Germans of barbarous methods of warfare, and to justify the British plan for starving the civil population of Germany as a legitimate method of warfare, or at least of retaliation. The British answer was thus a complete rejection of the suggestion made by the Government of the United States, almost a scornful rejection.

Furthermore, in the note handed with the Orders-in-Council of March 11, to the American Ambassador in London, the British Government no longer hesitates to call its action a blockade, a blockade both of enemy and neutral ports by British vessels at any distance from them.

Secretary of State, Bryan, was well within

the limits of moderate speech when, on March 30, he instructed the American Ambassador in London to say to the British Government that the Orders-in-Council of March 11, carried into effect, as they stood —

> would constitute a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area and an almost unqualified denial of the sovereign rights of the nations now at peace.

While Great Britain was thus unlawfully destroying, hindering, limiting, and acquiring our trade with neutral Powers, as well as our lawful trade with her enemies in non-contraband of war through non-blockaded ports, that is non-blockaded in the sense of the received international law at the beginning of the war, she was at the same time making the United States a base of supplies, a practically exclusive base of supplies, for her and her allies, not only in non-contraband articles, but also in arms and munitions of every description. Of course, she could not

have done this without the permission or the negligence of our own Government. It is entirely within the power of our own Government to prohibit or allow, or allow under conditions, trade between our citizens and the governments and people of foreign countries. This is a domestic power uncontrolled by international law, except in the one particular that the Government must not discriminate between belligerents in allowing or prohibiting or allowing under conditions.

It is also a well-recognized principle of international law that a neutral government is under no legal obligation to prevent its citizens from selling arms and munitions of war to belligerents when done in the *ordinary course of trade.* It is within its lawful authority to allow it, provided it allow the sale to all belligerents alike. It is only when this ordinary, impartial trade in arms and munitions becomes so expanded as to make the neutral country a base of war supplies to belligerents, that the government of that country is under an international law obliga-

tion to check and restrain the same, and especially is this true when the neutral country is by any means and under any conditions made a base of supplies for only one of the belligerents.

It is difficult, of course, to determine when the manufacture and sale of arms and munitions of war pass the boundaries of the ordinary course of trade and run into that excess which makes the neutral country a chief base of supplies. The government of the neutral country concerned must determine that question, but in so doing it must act justly and impartially, otherwise it gives the aggrieved belligerent a just cause of complaint. That, in the opinion of Great Britain's enemies, this country had, by the end of March, 1915, become a chief base of supplies for Great Britain and her allies, and practically an exclusive base, is fully evidenced by the memorandum handed to the Secretary of State of the United States Government by the German Ambassador in Washington on April 4, 1915.

At the same time it was manifest that the British Government had committed the Government of the United States to the doctrine that the Government of the United States could not, without a breach of neutrality, prohibit the manufacture and export of arms and munitions of war during the course of a war, if it had allowed the same at the beginning, no matter to what excess it might be carried during the course of the war, especially if only one belligerent could make use of the privilege of obtaining them while the other could not. The mere statement of this proposition is repulsive to any unsophisticated mind and it requires considerable patience to listen to the argumentation advanced to sustain it. If I understand it, and I am not sure that I do, although I have mumbled it over a good many times, it claims, as its major premise, that a neutral cannot change the rules of international law regulating its relations to the belligerents during the course of a war. Suppose we accept this as a principle, we are authorized by it to hold

that a belligerent cannot do this, either, in its relation to neutrals. The Government of the United States had again and again, as we have seen, told the British Government flatly that it had continually done that very thing during the course of this war.

Secondly, it claims that allowing or prohibiting the manufacture and export of arms and munitions of war is a matter of international law; a claim which is utterly groundless and false. The British Government itself is estopped from making any such claim. When in 1870 the North German Government applied to the British Government to prohibit the export of arms and munitions, Mr. Gladstone answered that it was true that Parliament had empowered the Ministry to do this, but that it was a purely domestic question and that the Ministry would use its power only as prompted by its view of the interests of British subjects. This is undoubtedly the correct attitude towards the matter. Any other attitude would impair the sovereignty of a neutral country over the

regulation of commerce between its citizens and subjects and those of other countries to an unendurable extent and bind the policy of the neutral to the will of the belligerent and rob it of its own domestic independence. With the failure of the minor premise thus the entire argument falls to the ground.

Sometimes the argument against a prohibition of the present munitions trade is put under form of a statement that it would help Germany and would, therefore, be unneutral. This is what logicians call the drop-stitch argument, and its fallacy, or at least its danger of fallacy, is shown by the retort that it would primarily be simply ceasing to help Great Britain, which neutrality requires. The truth is that a neutral government is held by international law only to make no exception in favor of one belligerent or the other in what it may do in regard to this subject. What consequences may be figured out of it, real or fanciful, do not bind it internationally in the slightest degree. Helping, or allowing, Great Britain to get a firmer grip on the

high sea, no matter whether she got that grip by her own efforts or not, is helping or allowing her to control, acquire or destroy the trade of neutrals as well as of her enemy. That a neutral is under any obligation to do or suffer such a thing is a claim which is preposterous and obtuse and may be disloyal.

Nevertheless, British diplomacy has apparently committed the Government of the United States to this doctrine, and the Government of the United States is now floundering in the meshes of this sophistry. But for this it would long since have brought Great Britain to a proper observance of the commercial rights of the Government and people of the United States and probably those of other neutral countries also. Let us hope that the Government will only flounder vigorously enough to rip the whole tissue of hypocrisy into shreds and fragments.

An impartial observer would think that, laboring under such embarrassment and dis-

advantage, the Government of the United States would have seen relief in the vigorous prosecution of submarine warfare by the Germans against British commerce and would, at least, have thrown nothing in the way of it. But one false step almost always leads to another, especially in narrow and obstinate minds, and most especially when such minds are endowed with greater facility of expression than power of reasoning.

Of course accidents were bound to happen to neutrals venturing into the area of conflict. The wise course for the neutral Governments was, it goes without saying, to minimize the danger as much as possible by prudent action, advice, and warning, and to deal with what nevertheless occurred as accident or incident, as the case might be, that is, without attributing any hostile *animus* to the offending party. The Government of the United States did not, however, manifest its adoption of this course. Between the latter part of March, 1915, and the first of May, three minor cases arose. The first was that

of the *Falaba*, a British merchantman, which undertook to escape from a German submarine and called assistance by wireless, after the submarine had commanded her to halt. She was sunk by the submarine and one American who chanced to be on board was lost. The Government of the United States did not dispute that a merchantman loses its immunity by attempting to escape, but contended that the *Falaba* had desisted from its attempt to escape before the shot was fired which sank her and that this desistance restored her to her immunity and made the sinking of her unlawful.

The second was the attempt made by a German aircraft to drop a bomb on the American ship *Cushing*. This was, of course, simply a mistake on the part of the airmen, who mistook the *Cushing* for a British vessel. The third was the attack by a German submarine on the American ship *Gulflight*, likewise a mistake of the commander of the submarine, who mistook her for a British ship. The American vessel was not sunk,

but two American seamen took fright and jumped over board and were drowned.

The Government of the United States seemingly began dealing with the German Government in regard to these matters on the theory that a direct and intentional attack had been made by order of the German Government upon the American flag and sovereignty and upon the lives and property of American citizens. The pro-British press of the East had worked up the minds of many of the people to view these events in this light. The German Government regarded these events, naturally, as accidents or incidents, and had no understanding for the American point of view.

The controversy had hardly begun, however, when it was entirely overshadowed by the *Lusitania* case, the great British liner sunk on May 7, 1915, directly or indirectly by a torpedo fired by a German submarine, a few miles from the old Head of Kinsala on the Irish coast, in which catastrophe one hundred and twenty American citizens lost

their lives. The whole country was deeply affected by the event and it was evident that great wisdom and patience would be necessary in dealing with the case.

The German view of the subject was expressed officially in its note of May 11, 1915, to the United States Government and to the Governments of the neutral Powers in Europe, expressing deep regret for the loss of life in connection with the event. This view was that the *Lusitania* was an armed auxiliary ship of the British navy, laden with munitions of war for Germany's enemy; that the place where she was torpedoed was in the declared war zone; that both general and special warning had been given by the German Government to the citizens of the United States to avoid traveling upon her; that the Cunard line, to which the ship nominally belonged, and the British Government, had disregarded and derided these notices and assured the passengers of their safety, encouraging and inducing them thus to risk their lives upon the vessel; that the

responsibility for the loss of human life in the catastrophe rested entirely upon the British Government; and that the German submarine warfare upon British commerce within the declared war area was a just and necessary retaliation upon Great Britain for her illegal blockade of the ports of the North Sea, neutral and belligerent, with the purpose of starving the German nation into subjection to the will of Great Britain.

The American view of the subject, as expressed in the American note of May 15, was that the *Lusitania* was an ordinary unarmed merchant vessel of a belligerent, traveling on the high sea, laden with legitimate cargo, subject only to visitation, search and capture, and if necessary, destruction, under the condition that the crew and passengers should be brought to a place of safety; and that as submarines could not fulfill these conditions, submarine warfare was unlawful, even as a retaliatory measure against the effort of Great Britain to starve the German people, civil and military, men,

women and children, by her unlawful acts into submission to her will.

On the basis of this view, the United States Government demanded that the German Government should disapprove the act of the submarine commander in sinking the *Lusitania,* that it should pay damages in so far as they could compensate the irreparable injuries inflicted, and should engage to take the necessary steps to prevent a repetition of such a catastrophe. The United States Government finally declared that it would omit no word nor act to protect the rights of the citizens of the United States and to enforce their full enjoyment.

Issues of fact, law and policy were thus raised which it would be necessary to settle before the German Government could be expected to give reply to the demands made by the Government of the United States.

First came, of course, the questions of fact. Was the *Lusitania* an armed vessel of the British navy? was it transporting munitions of war to Germany's enemies? and was

its destruction caused entirely by a torpedo from a German submarine or did an internal explosion of munition bring about her sudden destruction?

In its note of May 28, replying to that of May 15 of the Government of the United States, the German Government claimed that the facts that the *Lusitania* was built as an auxiliary cruiser with money advanced by the British Government and subsidized annually by that Government, was registered in the navy list given out by the British Admiralty, was practically declared, on the floor of the House of Commons, by a responsible member of the Government, to be, with all the other important British merchantmen, armed and ordered to ram, and fire on, submarines, and was carrying munition of war to Germany's enemies, were good evidence that the vessel was not to be classed as an ordinary merchant ship following peaceful pursuits, but as a war vessel of Germany's enemy.

From these facts the German Government

drew, in the second place, the legal conclusion that its war ships, submarines of course included, were acting within the established limits of international usage in attacking and destroying such vessels at any moment, anywhere, but especially within the declared war area, without warning, and without responsibility for injury to neutral persons or property that might be incidentally involved in the destruction of the enemy vessel. The German Government laid these facts and views before the United States Government for examination and reserved its answer to the demands made by the United States Government in its note of May 15, until further communication.

In its note of June 10, the Government of the United States claimed to controvert the view taken by the German Government in regard to the character of the *Lusitania* by the declaration that the officers of the port of New York had duly examined the vessel and that the Government was in position, on the basis of their evidence, to inform the Ger-

man Government that the *Lusitania* was an ordinary merchantman, engaged in peaceful commerce, no matter if she did carry munitions of war to Germany's enemies. The Government of the United States also pronounced the allegation of the German Government concerning the explosion of munitions on board the *Lusitania* as the proximate cause of the sudden submerging of the vessel and the consequent loss of life to be irrelevant.

Coming to the consideration of the questions of law, the Government of the United States declared its refusal to recognize the legality of a war area on the sea outside of the three mile limit from the coast in so far as it compromised the rights of Americans upon the high seas, and repeated its claim that the submarines must deal with merchant vessels in the same manner only as international usage allowed cruisers to deal with them. The Government of the United States did not, however, repeat the declaration contained in its previous note that submarines could not

proceed in this manner and that, therefore, their use for such purposes was illegal.

The German Government seems to have been a good deal staggered by these allegations of fact and these pronouncements of law. The German Admiralty knew that the evidence of the port officers of New York that they had examined a ship of the size of the *Lusitania,* in the short time that she remained in port, and had found her unarmed, was from the nature of the case unconvincing. Moreover the German Government and all the world knew that the officer upon whom the United States Government depended for this evidence was the very man who, only a little while before, had announced that he had in his possession complete evidence of a pro-British conspiracy, in New York, for provisioning the British cruisers patrolling our coasts and intended to lay the same immediately before the Grand Jury of New York County, and that this was never done, but the matter was dropped for some reason not then revealed. The

Germans argued that the Government of the United States either did not credit this evidence or did not want the conspiracy suppressed, and as the latter alternative could not, in good form, be premised of a neutral Government, were led to conclude that the Government of the United States did not credit the evidence presented by this officer. But if evidence gathered at comparative leisure and with every opportunity by this officer was held by his own Government not to be credible, how about evidence collected hastily and under the impression that nothing was wanted against Great Britain? These were some of the difficulties in the minds of the Germans, although the German Government did not venture to suggest them diplomatically to the Government of the United States.

Neither could the Germans appreciate the view of the Government of the United States that the fact that the ship was loaded down with munitions of war for their enemy was irrelevant to the question in controversy.

It was equally difficult for the German

Government to accept the contentions of law. The Government of the United States had substantially acquiesced in the British doctrine of the extended blockade claimed as necessary by the British Government on account of the exigencies of submarine warfare and in the British declaration of the North Sea as a war area, and the Germans could not see why this was not a legal precedent for their declaration of a war area around the British Islands and for such modifications of the law of cruiser warfare on merchant vessels in such a war area as the nature of the submarine required. And when it came finally to the principles of humanity urged by the Government of the United States in the waging of the war between the two chief belligerent powers, the German Government could not understand why the German nation should be ruled out of the ranks of humanity, why Great Britain should not be called to strict accountability for stretching and violating the rules and usages of international law with the avowed purpose

of starving the German people, civil as well as military, into subjection to their will, while the German Government should be held to such accountability when, in its endeavor to break the starvation cordon by such means as it possessed, a citizen of the United States should incidentally come to grief.

Except for the fact that the Secretary of State, Mr. Bryan, the highest diplomatic officer of the Government after the President, resigned his post rather than sign the note of June 10, the German Government might have felt that the Government of the United States was determined to take the sword against Germany. Of course, the withdrawal of Mr. Bryan could have been interpreted, and was by many interpreted, as the triumph of the war party in the administration, but it was evidence that the people did not stand behind the war party in the administration, at least not solidly, and that, therefore, Congress, the war-declaring organ of the United States Government, might not support any war measure. Under these circumstances

the German Government made one more effort to impress its view of the situation upon the Government of the United States.

In his note of the 8th, of July, 1915, the German Minister of Foreign Affairs expressed the complete sympathy of his Government with the humanitarian principles advanced in the American note; reminded the United States Government of the fact that Prussia, and then Germany, had always gone hand and hand with the United States in the attempt to secure the freedom of the seas, the observance of neutral rights thereon, and the immunity of private property during naval war from destruction or capture; referred again to the violations by Great Britain of the rights of trade between neutrals, and in non-contraband between neutrals and belligerents, and to the determination of Great Britain to wage a war of starvation against the civil population of Germany through these illegal means, as necessitating the German submarine warfare against enemy's merchantmen in the declared war

zone; called attention to the fact that the arming of merchantmen and commanding them to defend themselves against submarines had obliterated the distinction between war and merchant vessels and had made it impossible for the submarines to follow the usages of cruiser warfare without exposing themselves to certain destruction, and to the fact that the nearness of the *Lusitania* to the shore when she was attacked gave reasonable expectation that her crew and passengers would be all saved, so far as the injury from the submarine was concerned; repeated the assurance that American ships would not be molested and the lives of American citizens on neutral ships would not be endangered and that orders would be issued to the submarine commanders to allow all American passenger ships to pass freely through the war zone as elsewhere; proposed to agree to the placing of neutral ships under the security of the American flag for the safety and convenience of American travelers and even a certain number of enemy ships in case the

exigencies of American travel should require it; and declared that injury which a neutral might suffer from an attack upon a belligerent merchantman in the declared war area could be regarded only as an incident of war and not as a just cause of war between the country of the suffering neutral and the attacking belligerent, not even as evidence of unfriendliness.

The Government of the United States answered this note with promptness on July 23, 1915. The answer begins with the declaration that the German note was entirely unsatisfactory and then goes on to say that the Government of the United States observes with satisfaction that the German Government is in agreement with it in regard to the principles, that the high seas are free, that the nationality and cargo of a merchant ship must be ascertained before it can be lawfully taken into custody or destroyed, and that the lives of non-combatants cannot be lawfully endangered unless the warned merchantman resists visitation and search or

attempts to escape, since the German Government justified itself for not following these principles only upon the ground of retaliation, which was tantamount to the confession that it was acting outside of the law. The United States Government further contended that it could discuss the policy of Great Britain towards the rights of neutrals only with the British Government; that the attitude of other belligerents towards the rights of neutrals was irrelevant in a discussion concerning the violation of such rights by Germany; that when a belligerent finds himself unable to carry out retaliatory measures against his enemy without infracting the rights of neutrals, then humanity, justice and a proper consideration of the dignity of the neutral Powers require that the retaliating belligerent should desist from the employment of such measures; that the United States Government was not unmindful that the introduction of a new weapon of war might require a modification of old rules of warfare, and was ready to recognize such

modification within the limits of reason and necessity, but that the rights of neutrals rested upon principles which were unchangeable and forever fixed and were subject to no modification through changes of any kind in the instruments and methods of war.

The United States Government contended still further that the conduct of the German submarine warfare during the two months immediately preceding had demonstrated most satisfactorily that it could be carried on according to the rules governing cruiser warfare in force at the outbreak of the war, and that, on the ground of this fact and of the fact that the German Government had acknowledged the unlawfulness of its act in the *Lusitania* case by justifying it as a retaliation for the unlawful acts of its enemy, the Government of the United States expected that the German Government would no longer delay to condemn the reckless conduct of the commander of the submarine which sank the *Lusitania* and to pay indem-

nity for the lives of American citizens lost thereby, in so far as money could compensate for a purposeless destruction of human life by an unlawful act.

Finally the United States Government rejected bluntly every proposition of the German Government for enabling American citizens to travel securely through the declared war area around the British Islands and declared that it would consider any further acts of German naval commanders in violation of neutral rights in consequence of which American citizens might suffer injury as deliberately unfriendly towards the United States.

This note is peremptory and exhibits some inaccuracies in its statement of international law, but it contained the mollifying assurance to the German Government that Germany and the United States were working for the same end, namely, the freedom of the high seas, and it seemed to indicate that the United States Government considered the general question of submarine warfare as

settled and would confine the further controversy to the matter of compensation for the loss of American life in the sinking of the *Lusitania* and to the other specific cases.

The other cases which operated as a delay of the settlement of the *Lusitania* case were the *Frye,* the *Arabic,* the *Hesperian,* and the *Persian.* The *Frye* case does not come within the purview of this discussion, since the *Frye,* an American ship, was sunk not by a submarine but by a German cruiser, the *Eitel Fritz,* which brought the crew and passengers safely into an American port. The procedure of the German cruiser was justifiable under the general principles of international law, but the American state department contended that it was prohibited by the treaties of 1785 and 1799 between Prussia and the United States. This case was finally settled by the agreement of the German Government to pay the loss for ship and cargo and the agreement of both parties to refer the interpretation of the treaties of 1785 and 1799 in regard to the point in controversy to arbi-

tration under the thirty-eighth article of the Hague Conventions of 1907.

The *Arabic* case on the other hand was an aggravated case of submarine conduct. The *Arabic* was indeed, as the *Lusitania,* a munition carrier, but, at the time she was sunk, she was proceeding westward, with no munitions on board, and two American passengers were lost. This occurred on August 19, 1915, and the excitement caused by it in the United States was so intense that the German Ambassador at Washington felt constrained, on August 24, to ask the American public to suspend judgment until the German side of the question could be presented, and when this failed to produce the desired effect, he informed the American Secretary of State, on September 1, that he had received instructions from his Government that passenger liners would not be sunk by German submarines without warning and without providing for the safety of non-combatants, provided the liners did not resist visitation and search nor attempt to escape.

The German Government claimed that the commander of the submarine which sank the *Arabic* was convinced that the *Arabic* was endeavoring to destroy his boat by ramming. The captain of the *Arabic* denied that he made any such attempt, or had any such intention. The Washington administration accepted the word of the British officer and assumed a most determined attitude towards the German Government. Under this pressure the German Government informed the state department at Washington, through its Ambassador, that it had reprimanded the submarine commander for his hasty act, had issued orders to all submarine commanders which would render the repetition of such an event impossible and would pay damages for the loss of American lives and property. This was October 5, 1915. Meanwhile, on September 3, the *Hesperian,* a British liner was sunk, but as nobody saw any submarine or the wake of a torpedo, and the life of no American citizen was lost, the case demanded no particular attention from Washington.

On November 7, 1915, the Italian steamer *Ancona* was sunk by an Austrian submarine in the Mediterranean Sea, in which a number of American citizens, chiefly of Italian birth, lost their lives. The facts which seem to have been established by the testimony both of Austrians and Italians were that the submarine warned the liner to stop; that the liner attempted to escape; that the submarine pursued and shelled the liner and brought her to a halt, and finally sank her.

Two new features in submarine warfare were thus presented, namely, the merchantman was sunk in waters not declared by the belligerent sinking her to be a war zone and, though attempting flight at the outset, had stopped before she was torpedoed. The first consideration was of little consequence from the point of view of the Washington Government, since that Government did not recognize the legality of a war zone on the sea outside the three mile limit whether declared by any belligerent or not. On the other hand it made a very important point out of the

second consideration. It claimed that by ceasing its flight the merchantman regained its legal immunity from destruction without provision being made by the belligerent for safe-guarding the lives of the crew and passengers. The Washington Government insisted upon its contention as if it were a well-established principle of international law and assumed an attitude so uncompromising and so threatening that the Austro-Hungarian Government, though claiming that the submarine commander had given one and one-half hours time for the crew and passengers to take to the boats and was forced then to act by the approach of a supposed enemy warship, yielded to the demands that it recognize the illegality of sinking the merchantman while any of the crew or passengers were still on board, punish the commander of the submarine, and pay indemnity for the loss of life or for the injury of American citizens. This was December 29, 1915. On the 7th of January, 1916, the German Ambassador assured the state department at Washing-

ton that German submarine warfare against enemy merchantmen in the Mediterranean would be prosecuted in accordance with the established and recognized rules of cruiser warfare and that Germany would not practice its retaliatory measures in this respect against Great Britain in these waters or outside the declared war zone around the British Islands.

During this entire period from June 1, 1915, to the end of the year, negotiations between the Washington and Berlin Governments had been in progress over the *Lusitania* case. As we have seen, the Berlin Government had defended the legality of the act of sinking the *Lusitania,* without warning on the spot, and without safe-guarding the lives of the crew and passengers, chiefly as a retaliatory measure against Great Britain for her inhuman and illegal attempt to starve the civil population of Germany by the illegal closing of the North Sea to all commerce except such as she might permit. The German Government contended, as we have seen,

that retaliation is lawful against the unlawful acts of an enemy provided it be appropriate and kept within reasonable bounds; that the sinking of the *Lusitania,* an auxiliary ship of the British navy, probably armed, and laden with munitions of war for Germany's enemy, within the declared war zone and after warning given at the port of departure, was an appropriate and reasonable act of retaliation for Great Britain's violations of the rights of commerce between neutrals and between neutrals and belligerents, and that injury or loss to neutrals resulting therefrom was purely incidental and involved no responsibility on the part of the attacking belligerent.

The Washington Government, on the other hand, contended, as we have seen, that retaliation was extra-legal at all times and under all circumstances; that a declared war zone on the sea outside the three-mile limit was not to be regarded as having any legal value; that the *Lusitania* was an ordinary unarmed merchantman; that she had the

right to carry munitions of war subject only to capture as contraband; that neutrals had the right to travel on such ships anywhere on the high sea; that notice before departure was not the warning required by international law before a merchantman on the high sea could be lawfully visited, searched, or destroyed; and that the attacking belligerent was directly responsible for the lives and property of neutrals lost or injured in consequence of the sinking of, or an attack upon, any merchantman, except according to the rules established for the regulation of cruiser warfare against merchantmen before the outbreak of the war. The Washington Government, as we have seen, even designated any other conduct as unfriendly towards the country of the neutrals who might thus suffer injury and virtually threatened the rupture of diplomatic relations with the offending belligerent.

During the entire summer and autumn of 1915 the excitement over this question was kept up by all and every means, both artificial

and natural. The German Government was made to feel that there was grave danger of war with the United States if it did not accede to every demand. There is no doubt that the pressure brought upon the administration by all those pecuniarily and socially interested in the success of the Colonial Empires combined in this war was tremendous. It was certainly no easy task to guide the ship of state into peaceful waters at this juncture. Step by step, though apparently unconvinced by the arguments of the Washington Government, the German Government yielded to its demands. It agreed to indemnify for the loss of American life and property. Then it agreed to abandon submarine warfare against passenger liners, except in accordance with the recognized rules of cruiser warfare against merchantmen. And finally, while it would not concede the illegality of retaliation, it agreed to recognize responsibility for losses to American citizens occasioned by departure from the established rules of cruiser warfare. The

word used by the German Government in this connection was assume, assume the liability for the losses of American citizens. The Washington Government was determined to get out of the German Government some sort of a concession that the act of the submarine commander in sinking the *Lusitania* was unlawful and insisted upon the substitution of the word recognize for the word assume. The German Government finally yielded to the President's persuasive rhetoric and it was thought that the matter was settled. It was the 9th of February, 1916, when the German Ambassador at Washington agreed to this final change of words.

On the 18th day of the preceding month, the United States Government had sent a circular note to the Governments of the several belligerent Powers expressing its conviction of the soundness of the argument that the arming of merchantmen could, under existing conditions, have for its purpose only resistance to submarines in the exercise of

their right of unresisted visitation and search; proposing to them to disarm merchantmen; and announcing that the United States Government was considering the issuing of instructions to its own officials to regard armed merchantmen as auxiliary cruisers. With this the Washington department of state dropped momentarily its distinction between merchantmen armed for purpose of offense and those armed for purpose of defense, and proposed to make any armament the test of the distinction between war vessels and merchantmen.

On February 10, before it was known in Washington that the Berlin Government had ratified the supposed final agreement of February 9, entered into by the American President and the German Ambassador in regard to the *Lusitania* case, both the German and Austro-Hungarian Governments practically declared their acceptance of the proposition of the American state department of January 18, concerning armed merchantmen, by announcing that, after

March 1, they would regard all armed merchantmen of their enemies as warships and deal with them as such. Between February 10 and the 15th of the month, this announcement, the ratification of the Washington agreement of February 9, in settlement of the *Lusitania* case, by the Berlin Government, and the refusal of Great Britain to agree to the proposition of the American Government of January 18 in reference to armed merchantmen, were before the President of the United States and his Secretary of State.

There was little doubt in the minds of those who had followed closely and understandingly the course of Washington diplomacy as to what would be the result, but most people were surprised and some disgusted when, on February 16, the declaration from the state department was made public that the new German manifesto appeared to open up the question as to how submarine warfare would be conducted in the future and that any settlement of the *Lusitania* case must

depend upon that. On the next day the American Secretary of State informed the German Ambassador that the United States Government would not ratify finally the agreement which it had entered into in the *Lusitania* case unless the German Government should give definite guarantees for the future conduct of submarine warfare in accordance with the assurances previously given by Germany. The Secretary of State also indicated, though it would hardly be exact to say that he distinctly announced, that the Washington administration would consider all vessels belonging to a line as liners, whether carrying passengers or freight or both and even tramp steamers, extending the concept of the liner, thus, much beyond the German understanding, the German Government meaning by the expression only regular passenger steamers.

The Washington administration had now definitely backed out of the position which it took on January 18, namely, that it was considering the issuing of instructions to the

United States officials to deal with the armed merchant ships of belligerents as warships. Many members of Congress felt that the foreign policy of the Government was now drifting without the guidance of any fixed American principle and that we were in imminent danger of being made a tool of British diplomacy. They persuaded Congress, as the ultimate war-declaring body and the ultimate interpreter in our governmental system of international law for the citizens of the United States, to take up the vital questions which were impending. During the last days of February and the first days in March occurred that memorable debate in both Houses of Congress, which, while it virtually put an end to all war movements against Germany, manifested the indirection under which political movements are too often accomplished among us, and the muddling of the popular mind in regard to the result.

The discussion turned around two resolutions for warning American citizens not to

take passage upon belligerent merchant vessels traveling into war areas, one introduced into the Senate by Mr. Gore and the other into the House by Mr. McLemore. The President claimed that the passage of such a resolution by Congress would be an invasion of his diplomatic prerogatives, would be the surrender of a well established right of American citizens on the high seas, and would be an infraction of international law. It certainly would not have been any invasion of his diplomatic prerogatives and it certainly would not have been any infraction of international law. It would have been simply a declaration by the Government of the United States to the citizens of the United States as to how far that Government would undertake to protect those citizens upon armed belligerent merchant ships against the accidents of war. Thus stated, no man of common sense, with only a slight knowledge of our constitutional law, can fail to see that this is a question to be settled either by the provisions of the Constitution or by

a statute of Congress and has nothing whatsoever to do with the President's prerogatives or with the rules of international law; while as to the passage of the resolution being the surrender of the right of American citizens to travel on armed belligerent merchantmen, it has to be said, that the resolution did not propose to forbid American citizens from traveling on such ships, but simply to wash the hands of the Government of all responsibility for injuries coming to them through the accidents of war. The proposers and upholders of the resolutions in both Houses of Congress saw no loss of honor or self-respect, no humiliation, as claimed by the President, in doing this, because, in the first place, it was very clear that the arming of merchantmen could have no other purpose than to prevent submarines from exercising their right of visitation and search; and, in the second place, it was equally clear that the presence of American citizens on such ships was being encouraged by one of the belligerents and its American

adherents in order to protect and insure the safe delivery of munitions of war purchased by that belligerent in the United States. The proposers and upholders of these resolutions saw humiliation and loss of American honor and self-respect in allowing American citizens to be used for such a purpose, except upon their own personal responsibility, and even then.

It was stated on the floor of Congress and also in the public press that a large majority of the members of Congress, in both Houses, took this view of the subject and favored the passage of these resolutions. It is very difficult to understand why the President did not also take this view, when we regard the question upon its merits. It is comprehensible, however, from the point of view of the political situation. This is Presidential election year. The President desires re-election. The pro-British press of the East had criticized severely the note of January 18. On February 15, Mr. Elihu Root made a most wanton onslaught upon the foreign policy of

the administration. It was thought to be, and was probably intended to be, the keynote of the Republican campaign. It was altogether too violent and denunciatory and it caused the revolt of many old and hitherto loyal Republicans. But it seemed to carry consternation into the camp of the Democrats and to give the President the greatest uneasiness. He and his chosen lieutenants in Congress are, however, capital politicians and they could hardly have failed to see, in the attitude of Congress, their opportunity to turn the attack of the pro-British press and the adherents of the Allies upon Congress, and make the President appear to be the defender of the honor and rights of the nation and its citizens.

Beginning with the letter of February 24, to Senator Stone, this course was entered on and followed, whether consciously or not, and produced this, for the President, fortunate result. If we subject this letter to dispassionate legal analysis, we shall find it resting upon insufficient legal foundation, but

containing that impassioned rhetorical exaggeration vulgarly called the waving of the flag or the flapping of the eagle's wings. It was a clarion call to the nation to defend its honor, although in what point, and by whom, attacked, it was not stated, betrayed, however, by a timid pro-German Congress. The effect was almost instantaneous. The pro-British press now lauded the President to the skies and sprang upon Congress with the weapons of misrepresentation, vituperation, and blackguardism. This attack could now be brought by the President's friends to a victorious conclusion. In the early part of the maneuvers, before the administration had felt the strong support of the press, the foreign affairs committee had been required by the administration not to report the warning resolutions to the House of Representatives on the ground that they were an interference with the President's prerogative as sole director of the diplomacy of the country. This disposition of them, however, would not produce any great political eclat. They must,

to this end, be reported out and voted down by the Houses under the outside pressure aroused by the President's superb patriotism. On February 29, the President wrote Mr. Pou, the acting chairman of the committee on rules of the House of Representatives, urging this committee to secure early consideration and vote upon the warning resolutions in order that immediate opportunity for full public discussion and action upon them should be offered. He gave as his reason for this request that the report had gotten abroad that there were " divided councils in Congress in regard to the foreign policy of the government, " and that this report was being made use of industriously in foreign capitals to the injury of the United States. He refused to be satisfied with a vote of confidence proposed by some of his friends, and insisted upon the resolutions being brought into the Congress, ostensibly for free discussion.

In accordance with the instructions of the President, the committee on foreign affairs

of the House of Representatives reported the McLemore resolution with the recommendation that it be laid on the table as proposing interference with the diplomatic prerogatives of the President. It was manifest from this that the administration had for some reason dropped its demand for a full and free discussion of the resolution and a frank expression of the opinion of Congress to the President on the subject of warning American citizens not to travel on armed belligerent merchantmen. It was declared in and out of Congress that a very large majority of the members favored the giving of such a warning by the Government. Debate upon, and amendment of, and vote upon the merits of, the McLemore resolution, either as amended or in its original form, must now be prevented and some form of procedure devised whereby the members should not be required to stultify themselves on the merits of the question and yet, at the same time, the President should not be humiliated.

The rules committee of the House of

Representatives now brought in a resolution which provided that the House should immediately proceed to the consideration of the McLemore resolution and that after four hours of general debate the said resolution should be dealt with under the general rules of the House. This meant that after four hours of debate the motion would be made to lay the resolution on the table and that this motion must be immediately put. In other words the rules committee decreed the previous question on tabling the McLemore resolution after four hours of debate. The ranking minority member of this rules committee, Mr. Campbell, protested against this procedure and asked the House to vote down the motion of the rules committee in order that he might offer a substitute which read as follows:

That in the opinion of the House of Representatives citizens of the United States under existing conditions and irrespective of their legal rights ought to refrain from taking passage on armed vessels of belligerent Nations, and the consideration

of this resolution and any amendments thereto shall proceed under the five minutes rule to a final vote on its passage.

This would have secured the full and free discussion of the question of warning and a vote upon the merits of the question which the President had ostensibly demanded, but which his managers in the House were now seeking to avoid through the parliamentary tactics just described for substituting therefor limited debate and a vote to lay on the table. The Democrats would not vote against the warning resolution, but, out of consideration for the President, they would vote to lay it on the table and, with the nominal debate, this action could be made to appear to the country as a triumph of the President in upholding the honor and dignity of the flag. Mr. Campbell, therefore, pleaded in vain. The gag resolution of the rules committee was adopted and, after the short debate allowed, the warning resolution was laid on the table by a vote of 276 to 142, on March 7.

In the Senate, on the other hand, by a parliamentary maneuver of the cleverest nature, Mr. Gore defeated the parliamentary maneuvers of the President's managers. After Senator James had moved that the warning resolution and all substitutes for it and amendments to it be laid on the table and had demanded the yeas and nays upon his motion, Mr. Gore claimed his right, under rule XXI of the Senate, to make a substitute for his resolution and the Vice-President ruled that he had the right to do so, but without debate by him or any other member of the Senate. Mr. Gore then revealed his substitute and the vote had to be taken on the motion to lay it on the table immediately. It read:

Resolved by the Senate (the House of Representatives concurring) That the sinking by a German submarine, without notice or warning, of an armed merchant vessel of her public enemy, resulting in the death of a citizen of the United States, would constitute a just and sufficient cause of war between the United States and the German Empire.

This is the resolution which the Senate laid on the table by a vote of 68 to 14, 14 not voting, March 3.

The pro-British press immediately declared that the President had won a great victory and that the Congress, in both Houses, had been forced by him to vote down the warning resolutions. But this was sheer hypocrisy. For, if a vote to lay a motion on the table signifies the voting down of that motion, then the Senate voted down the motion —

> that the sinking by a German submarine, without notice or warning, of an armed merchant vessel of her public enemy, resulting in the death of a citizen of the United States, would constitute a just and sufficient cause of war between the United States and the German Empire.

And this was the exact contradictory of the President's view and the President's demand upon Congress.

The fact is that voting to lay a motion or resolution on the table is not necessarily the voting down of the motion. It depends upon

the motives of those voting to lay it on the table whether it signifies that the motion is voted down or not. It is difficult to determine the motives of any one man even, but, if the motives of any body of men ever did manifest themselves clearly, we are authorized in holding that a very large majority of the members of both Houses of Congress and the overwhelming majority of the people of the country favored a warning resolution, but that Congress hesitated to humiliate or break with the President and was confused by the President's claim that it was threatening to invade his diplomatic prerogatives, and was giving comfort to the foreign Government with which he was in diplomatic controversy. Under these conditions the House of Representatives sought a way out, without committing itself for or against the resolution, while the Senate, as we have seen, did not concur with the House at all, but laid a motion on the table which if it meant anything, could only be interpreted as favoring a warning resolution.

The outcome of the episode was that the administration was virtually warned by Congress that it was going too fast in its treatment of one belligerent and too slow in its treatment of the other and that it should practice a stricter neutrality in dealing with both. This seems, happily, to have been the effect of it. So long as this spirit prevails in Congress it is hardly probable that the United States will be involved in the European war.

During the last days of February, in the midst of the struggle in Congress, the German Government informed the Government of the United States that all its assurances in reference to warning merchant vessels held; that these assurances were made as to unarmed merchantmen only; and that the British Government was arming its merchantmen for attacking submarines and had given them orders to that effect. The German Government offered to furnish the Government of the United States with copies of such orders and did furnish them.

March 8, the German Ambassador handed the United States Government a memorandum from his Government reviewing the history of the attitude of Germany and Great Britain towards the rights of neutrals and praying the United States Government to appreciate the German situation, while Admiral von Tirpitz retired from the command of the German navy at about the same time. Meanwhile the German Government had not withdrawn or suspended its declaration against the armed merchantmen of its enemies and a number of British merchantmen had been sunk upon which American citizens were traveling, a few of whom suffered injury or perhaps only inconvenience, but none of them death. The Government of the United States addressed inquiries in regard to all these events to the German Government.

Finally the French channel steamer *Sussex* was struck midway in the channel, the prow and forward part of the ship blown off, many persons killed and injured, among

the injured being a few American citizens. It seemed hardly credible that a German submarine could have penetrated so far into the channel in its narrow part between the English and French coasts, and that, therefore, the injury to the *Sussex* must have been caused by a mine or an internal explosion, but there were persons on board who claimed to have seen the wake of a torpedo, though no one claimed to have seen a submarine, and there was other evidence presented which seemed to point to the torpedo theory rather than the mine theory. The United States Government was soon placed in possession of this evidence, but not deeming it entirely conclusive, addressed an inquiry to the German Government.

It was on April 10, that the German Government made its reply. This reply contains, first, the answers to the American inquiries in regard to the sinking of the British ships, *Berwindvale, Englishman, Manchester Engineer,* and *Eagle Point.* In all these cases except the *Manchester Engineer,* the German

Government reported that warning had been given; that the vessels had attempted to escape; that they had been brought to halt by firing upon them; that the persons on board had taken to the boats of their own accord; and that then the ships were torpedoed and sunk.

As regarded the *Manchester Engineer*, the German Government reported that it had no evidence showing that it had been sunk by a German submarine and asked the United States Government to communicate to the German Government any evidence it might have on the subject. The German Government did not claim that any of these ships were armed. No diplomatic crisis could be produced by any of these cases.

The *Sussex* case was, however, of a much more serious character. This was an unarmed channel steamer of a French line; was blown up without warning; and several American citizens were injured. The more natural presumption was, as I have said, that the boat had struck a floating mine. The

German Government itself evidently thought so before it had received the reports of its submarine commanders. It waited with its reply to the American inquiry until it received these reports and then informed the Washington Government that one of its submarine commanders had reported having been in the channel waters between Folkstone and Dieppe on March 24th, the day on which the *Sussex* was struck, and having torpedoed a long black craft with a gray funnel, small gray forward works and two high masts, and bearing no flag, which he took for a British minelayer, about 3:55 p. m., on that day.

The German Government asserted that in its opinion this could not have been the *Sussex,* despite the fact that the time and place of this event coincided roughly with the time and place of the *Sussex* disaster, and that no other submarine attack had been made on March 24 in these waters. The German Government asked the American Government, however, for such evidence as

the American Government might have tending to show that the *Sussex* was the torpedoed vessel reported by the German submarine commander, and offered, in case the evidence should not be convincing to the German Government, to submit all the facts and evidence in the case to a mixed commission as provided in title III of the Hague Agreement of 1907 for the peaceful settlement of international conflicts.

On April 18, the Washington Government brushed aside the German explanations and offers; declared that the evidence in its hands was complete proof of the destruction of the *Sussex* by a German submarine and that the report of the German submarine commander corroborated this evidence; declared that warfare against merchant vessels by submarines could not be carried on without violating international law; and threatened to break off diplomatic intercourse with the German Empire unless the German Imperial Government should "immediately declare and effect an abandonment of its present

methods of submarine warfare against passenger and freight-carrying vessels."

The President sent this note to the German Government on April 18. He appeared before a joint session of the two Houses of Congress on the 19th, and informed Congress what he had done. There was much indignation among the members of Congress, that the note should have been sent without the approval of Congress. It is absolutely certain that the President had no constitutional power to send it without that approval. His power to refuse to receive an ambassador or to require his recall or to hand him his papers, on the ground that he is *persona non grata,* is the extent of the President's powers in this respect. The power to break off all diplomatic intercourse with a foreign state is quite a different thing. It is a preliminary to war and Congress alone, as the war-declaring body in our Government, can do or threaten to do such a thing. After the transmission of this note to the German Government became known to the people of the

United States, demonstrations of all kinds against war with Germany were made. Under the influence of the same the Washington Government issued, on April 26, its code of distinction between an offensively and a defensively armed merchantman. This code had been prepared a month before. Its issue at this time, whether so intended or not, and despite its confused propositions, was an assistance to Germany in answering the peremptory note of April 18.

On May 4, the German Government delivered to the American Ambassador in Berlin its reply to the note of April 18. In this communication the German Government repelled the charge that the *Sussex* incident should "be considered but one instance of a deliberate method of indiscriminate destruction of vessels of all sorts, nationalities and destinations;" declared it could not give up its submarine warfare against the merchant vessels of its enemy; offered, however, in order to avoid responsibility for the extension and prolongation of the war, to concede

to the demands of the United States the ground covered by orders already issued to its submarine commanders, which read:

> In accordance with the general principles of visit and search and the destruction of merchant vessels, recognized by international law, such vessels, both within and without the area declared a naval war zone, shall not be sunk without warning and without saving human lives, unless the ship attempts to escape or offer resistance.

And, finally, gave notice that if the steps taken by the Government of the United States to bring the enemies of Germany to an observance of the laws of humanity should fail, Germany would be facing a situation which would require complete liberty of decision on her part.

The pro-British press made a great ado about this final notification and the Washington administration saw fit, in accepting the German proposal, to treat this declaration on the part of the German Government, that it could not deal with its enemies under these restrictions unless they would also obey the

laws of humanity and of nations, as a condition of its acceptance of the American requirements, and to reiterate its contention about responsibility in the matter of the infliction of injury by belligerents on neutrals being single and separate, not joint, without making any distinction between incidental, unintended injury and direct intended injury, and without making any distinction between things which stand related to each other as cause and effect and those which do not.

In a supplementary note of May 8, the German Government declared again its acceptance of the American evidence as conclusive; acknowledged that the submarine commander attacking the *Sussex* had not exercised sufficient care in living up to the assurances given to the Government of the United States in regard to the treatment of passenger vessels; declared that the commander had been punished for his carelessness; expressed deep regret for the deplorable accident, and offered to pay full indemnity for injury to any American citizen.

The situation at the present moment, November of 1916, is, therefore, as follows: The German Government has agreed to conform its submarine warfare against merchantmen, belligerent as well as neutral, to the recognized rules of cruiser warfare, with the understanding, that unless the unlawful practices of its enemies against the commerce of neutrals and between neutrals and Germany in non-contraband articles should cease within a reasonable time, the German Government cannot consider itself as bound by this agreement, the Washington administration protesting, however, against illegal acts on the part of Germany's enemies being any justification for acts on the part of Germany deemed illegal by that administration.

The illegal acts of Germany's enemies, complained of as such by both the German Government, the Washington administration, and all other neutral governments, not only still continue, but have been greatly aggravated in every particular. The Government

of the United States has not been able to do the slightest thing ameliatory of the unlawful acts of Great Britain and her allies in violation of the rights of neutral commerce with the purpose of starving the civil population of Germany and her allies.

The Washington administration has not even been able to secure the transmission of supplies to the branches of the International Red Cross operating in the Central Empires. It is now actually suffering the blacklisting and proscribing of its own citizens, as well as the robbing of its mails and the destruction of its commerce with neutrals and with the Central Empires. The German Government has never assented to the doctrine of the Washington administration that retaliation, when appropriate in nature and reasonable in extent, is unlawful. On the other hand, the Washington administration still holds the *Lusitania* question open as a means of forcing Germany to refrain from resuming retaliatory measures, through her submarine warfare, against Great Britain's lawlessness.

The Washington administration, in addition to its threats, had all along borne hard upon the German Government with the argument that Germany's case against Great Britain rested, more than upon anything else, on Germany's historical defense of the freedom of the seas and that she should not stultify herself. Whether the threat or argument had the greater influence in determining Germany's course is difficult to determine. The argument undoubtedly had a very great influence. Certain it is, however, that the Washington administration cannot use any such argument with full force so long as it acquiesces in the tyranny of the seas by Germany's enemy. When a belligerent unlawfully prevents a neutral from commerce and trade with its enemy, and the neutral does not enforce its right against, nor withdraw from commerce and trade with, the offending belligerent, then is the neutral virtually an ally of such belligerent. Under such conditions, the appeals of the neutral to the retaliating belligerent lose much, if not all, of

their force. They lack the element of sincerity indispensable to effectiveness.

It is, therefore, to be feared that the controversy over retaliatory submarine warfare against merchantmen may be revived by new acts of retaliation against the increasing lawlessness of Great Britain and her allies on the high seas. It has become intolerable not simply to their enemies, but to the neutral nations. It will be difficult to refuse further to recognize the legitimacy of the *lex talionis,* or to fix bounds to the appropriateness or the measure of the means which may be rightfully employed under it, unless British maritime policy and practice be immediately and radically reversed and the freedom of the seas for neutral commerce in time of war, restrained only by the law of contraband and blockade as recognized at the outbreak of the war, be immediately re-established.

This last paragraph was written five days before the retaliatory amendments to the revenue bill were passed by the Senate. Two

of them, giving the President the power to deny clearance papers to vessels refusing to take merchandise offered by any American citizen for transportation, and to embargo imports from any country embargoing imports from the United States to itself or to any other country, have become law. They are both retaliatory measures, but I do not think it has occurred to anybody to say that they are outside of the law. They certainly are as good law as anything on the statute book of Congress. They are well within the requirements of the *lex talionis* in their appropriateness and in their moderation. In fact they do not go far enough, and furthermore they leave the whole subject of the mail grievances untouched. I think, however, that we have done with the fallacy that retaliation is unlawful or outside of the law, and this is an enormous gain for us. We are now on the right line in regard to this subject, thanks to the wisdom and courage of Congress, and we shall, in all probability, pursue it much further.

CHAPTER II

THE ALLEGED AMERICAN PRECEDENTS FOR THE BRITISH BLOCKADE OF THE NEUTRAL PORTS OF THE NORTH SEA

TO an American citizen whose memory and experiences run back to the years between 1861 and 1865, and who saw his country suffer under the malevolent neutrality of Great Britain, called by one of our most brilliant statesmen the "malignant neutrality" of Great Britain, the attempt of the British Foreign Secretary to justify Great Britain's present interference with the commerce between our country and the neutral countries of Europe upon the basis of American precedents established during that period comes very near to adding insult to injury. There is no essential feature in which the two cases are parallel.

In the first place, the only position in international law which the insurgents had

was created for them by the unnecessary and unfriendly action of Great Britain and France in recognizing them as belligerents. This action was unnecessary because, since the insurgents had no navy nor merchant marine, and since the parts of the territory held by them were quite effectively blockaded, they could not come into contact with any Power upon the high seas and no Power would be under any necessity of determining its attitude toward them, and it was unfriendly because, in the absence of any such necessity, it was an unwarranted interference in the internal affairs of our own country.

The countries in Europe, both neutral and belligerent, with whom our commerce is now being hampered and destroyed by Great Britain have had no such introduction under the protection of international law by our wrongful or meddling act. They existed as sovereign and independent states in the family of nations before we were born into it.

In the second place, to compare the ports of London and Nassau, as the ports of two

neutral countries or as two neutral ports, with the ports of New York and Rotterdam or the ports of Boston and Christiansand is most unfair and deceptive. In the seventh decade of the last century Nassau was a settlement of some seven thousand persons, mostly blacks, upon the little sandy island of New Providence, about one hundred and twenty square miles in area, and lying less than two hundred miles from our Florida coast. It was then, as now, subject to the crown of Great Britain. It was, however, the place — by whose appointment we know not, but have good right to suspect — where the cargoes of arms and munitions of war and other contraband articles were transferred from the ships which brought them from Great Britain to the daring little crafts, belonging really to whom God only knows to this day, which took them over to the mainland.

To call this place the port of a neutral country or a neutral port like Rotterdam, Copenhagen, and Christiansand, the great,

populous commercial marts of rich and populous countries, with their vast demands for internal consumption, is really exasperatingly trifling. In truth, to term this place, Nassau, a neutral port at all at that time is to confound fiction and form, fact and substance. So far as our relations to Great Britain were concerned this place was then a port of the insurgents against our Government, made in law our belligerent enemies by the act of Great Britain and France in formally recognizing them as such, and protected against us by the British flag.

However, the Court did not decide the case chiefly relied on by the British Foreign Secretary as the American precedent for blockading neutral ports, the *Springbok* case, on the theory that Nassau was an enemy's port, but on the theory that it was a neutral port.

The main point is: Did the Court decide the case on the principle that we were blockading the neutral port of Nassau? Unless it did so it is no precedent for the British Foreign Secretary's contention. I have al-

ways found that in studying the decisions of our courts, foreigners almost invariably confound the opinion of the court with the judgment of the court. Now there may be, there often is, a difference, sometimes a very great difference, and sometimes an apparent, if not a real, contradiction between these two things. Many of our judges are too much given to writing opinions — that is, reasons for the judgments — in order to show off their superior learning or their brilliant rhetoric, and many of them write their opinions hastily and loosely.

Chief Justice Chase, who wrote the opinion in the *Springbok* case, was of this latter class, and in almost every opinion he ever wrote there are expressions difficult to reconcile with the judgment. But American lawyers know that it is the judgment which is the precedent and not the opinion. Now what was the judgment in the *Springbok* case? It was that the vessel should be surrendered to its owners and the cargo, consisting partly of contraband and partly of

non-contraband articles, all belonging to the same owners, should be condemned. The exact wording of the judgment was as follows: "The decree of the district court must, therefore, be reversed as to the ship, but without cost or damage to the claimants, and affirmed as to the cargo." The district court had condemned both ship and cargo.

Now, on what principle of international law did this judgment of the Supreme Court rest? Not on the principle surely of the blockade of the port of Nassau, for, in that case, the Court would have condemned the vessel, no matter whether its owners were the owners of the cargo, in whole or part, or not, and no matter whether the cargo was contraband or not. It would have condemned the vessel, of course, in punishment for the unlawful act of undertaking to run the blockade.

If not then on the law of blockade, it manifestly rested on the law of contraband, on the right of a belligerent warship to halt and search anywhere upon the high seas a neutral

merchantman, which the commander of the belligerent warship suspects of carrying contraband of war to the enemy of his government, and, on finding his suspicion confirmed, to take the ship of the neutral into a port of his own country and deliver it into the jurisdiction of a prize court therein, and on the right of the prize court of the belligerent, on sufficient evidence, to confiscate the contraband cargo, and, in case the cargo is partly non-contraband, but belongs to the same owners, to confiscate that also, releasing the vessel, provided its owners are not the owners of the contraband cargo and not in collusion with their unlawful undertaking.

But it is superfluous for me to say that this principle does not contain the slightest justification of, or precedent for, the blockading of neutral ports by a belligerent. In strict juristic verity, the *Springbok* case is a precedent only for a situation of the following description, viz: Let us suppose that the British Government was a federal Government and Scotland was one of the States thereof;

that an insurrection had broken out in Scotland of sufficient strength to control the State government therein; that the United States of America had recognized the belligerency of the insurrectionist government in Scotland and had given it thus a standing in international law; that the United States of America possessed a small island somewhere within 200 miles of the Scotch coast, inhabited chiefly by a few thousand semi-savages, and that the United States of America allowed the sole harbor of that island to be used as the entrepot for sending arms, ammunition and other contraband of war to the insurgents in Scotland.

Now, upon the basis of a situation of this sort, the judgment in the *Springbok* case would be a precedent for a British warship to halt and search a merchantman of the United States of America which the commander of the warship suspected of carrying contraband of war by way of that entrepot to the insurgents in Scotland, and, on finding the suspicion confirmed, to take the

merchantman into a British port and deliver it into the jurisdiction of a British prize court, and for that court, on sufficient evidence, to condemn the contraband cargo, and in case there was also non-contraband cargo, but belonging to the same owners, to condemn that also, releasing the neutral merchantman, provided it should not be owned by the owners of the cargo nor involved by any collusion between its owners and the owners of the cargo in the unlawful undertaking.

This is the whole extent of it, and it is the right of the Government of the United States and its bounden duty toward its own citizens and to the world to see to it that this *Springbok* case shall not be exaggerated and falsely expounded into a precedent for the destruction of commerce between neutral nations in times of war, certainly not by that nation whose malevolent neutrality during the period of our Civil War produced the case.

That the meaning of the judgment in the *Springbok* case was such as I have stated

it, and that it was the meaning attached to it by the Chief Justice himself who pronounced the judgment, is still further sustained and manifested, by the judgment in the *Peterhof* case announced immediately afterward, at the same term of the Court, and by the same Justice. On suspicion that she had on board contraband of war destined for the insurgents in Texas, the British merchantman, *Peterhof,* bound from London to Matamoras in Mexico, was overhauled by a warship of the United States and taken into a port of the United States and delivered into the jurisdiction of a prize court of the United States.

The Court found that the merchantman was carrying contraband of war intended by the shippers of it for the insurgents; that she was also carrying non-contraband cargo, part of which belonged to the owners of the contraband articles; that the owners of the ship were also in part the owners of the cargo and had knowledge of the destination of all parts of the cargo, and that Matamoras, hardly a stone's throw away from the American

boundary and reached from the sea only by means of a river blockaded at its mouth by the forces of the United States, was, nevertheless, a neutral port, not subject to the blockade.

On the basis of these findings the judgment of the Court ordered the release of the ship and the condemnation of the contraband cargo and such part of the non-contraband cargo as belonged to the owners of the contraband articles. The Chief Justice declared expressly that the blockade imposed by the United States did not extend to the neutral port of Matamoras; that he knew of "no judicial precedent for extending a blockade by construction;" "that trade between London and Matamoras, even with intent to supply, from Matamoras, goods to Texas, violated no blockade;" and that contraband articles, "if really intended for sale in the market of Matamoras, would be free of liability," that is, free from confiscation.

It is thus completely manifest that the judgment of the Court in both of these cases

rests upon the principle of international law which warrants a belligerent warship to halt and search a neutral merchantman on the high seas on suspicion that it is carrying contraband of war originally intended for the enemy of the belligerent government, either by direct delivery or by transshipment, and to secure confiscation of the contraband with all of its legal consequences by taking the neutral merchantman with its cargo into a port of the belligerent country and delivering it into the jurisdiction of a regular prize court, and that these judgments do not furnish, in the slightest degree, precedents for blockading neutral ports or interfering with trade in non-contraband articles between a neutral and the enemy of the interfering belligerent through neutral ports, or even with trade in contraband articles when originally consigned, *bona fide,* to an inhabitant of the neutral country and sold in its markets.

Neither did the decision in the *Bermuda* case nor the *Hart* case, which preceded those in the *Springbok* case and in the *Peterhof*

case, rest in the slightest degree, upon any claimed right of the United States to blockade neutral ports, but upon the right to take enemy property, and contraband of war destined to an enemy port, wherever found on the high seas. The decision of the Chief Justice in these cases reads as follows:

> It is enough to say that neutrals who place their vessels under belligerent control, and engage them in belligerent trade, or permit them to be sent with contraband cargoes under cover of false destination to neutral ports, while the real destination is to belligerent ports, impress upon them the character of the belligerent in whose service they are employed and cannot complain if they are seized and condemned as enemy property.

From a strictly correct legal standpoint, the law or fact of blockade was not involved in any of these cases. It was only the law in regard to enemy property and contraband of war.

These court decisions, in so far as the destination of ship or cargo or both, was concerned, rested upon proof that the destina-

tion was an *enemy* port, not necessarily a *blockaded* port. The United States Government designated the ports of the United States situated within the southern States as *blockaded* ports instead of as *enemy* ports for two reasons. The first was that the Government did not give the insurgents the status of public enemies, and the second was that *all* these ports were *blockaded*.

It is most irritating that Great Britain, of all the countries in the world, should endeavor to twist and pervert these judgments into such a precedent. It was her own indirections, her own sinister deeds and tortuous methods, and her own malevolent spirit toward us in our great national peril and extremity, which forced us to the limit of our rights under international law. And now for her Foreign Secretary to calmly exaggerate and erroneously expound these judgments and throw them into our faces as refutation of our contention for the rights of neutral commerce is the audacity of condescension. Great, however, as is his self-assurance, he

manifests a consciousness of the weakness of his position in at least one particular.

He appeals to our Government's favor by reciting accusations against the maritime practices of his country's enemy. I will not dwell upon the fact that some of these arraigned practices follow in time those acts of the British Government against which we have filed our complaint and are declared by Great Britain's enemy to be in retaliation therefor, and are, therefore, discontinuable with the acts themselves. I will only say that in one of the communications of our Government to Germany we notified the Imperial Government that we could not discuss our relations to other governments with it. We have, therefore, as a neutral country — that is, as a country which strictly accords parity of treatment to both or all belligerents — the answer already well formulated to the attempt of the British Foreign Secretary to drag references to Germany or any other country into the discussions between Washington and London.

I am not aware that the British Government seeks to justify its treatment of our mails by citing the acts of the United States Government during the Civil War of 1861-65, or in any other period, as precedents. It could not do so truthfully. In fact the treatment accorded neutral mails by the United States Government was the exact opposite to that now practiced by the British Government. An extract from the recently published *Letters and Recollections* of John Murray Forbes relating to this point, has been brought to my attention and I will insert it here. It was written in 1863.

Among my London acquaintances was Mr. Edward Ellis, a member of Parliament himself and, I think, with one or two sons in that body. He was a friend and adherent of Palmerston and having a pecuniary interest in land on this side was supposed to be very well posted about American affairs. It was just at the time a controversy was going on about the letter bag of a steamer. It had been seized with the vessel carrying a cargo of munitions of war nominally to Mexico but undoubtedly intended for the Texan rebels. The bag must have

contained proof of this, but being under the seals of the British Post Office was claimed by the British Minister as sacred, and the dispute was going on as to what should be done with it; the condemnation of the vessel and cargo amounting to a very large sum depending a great deal on the result. I was dining at Mr. Ellis' and while we were standing before the fire waiting for dinner to be announced two other of the younger members of Parliament came in and announced "the good news" that the letter bag had been given up without being opened and removed the danger of a rupture in the friendly relations between the United States and Great Britain. This was all very polite, Mr. Adams being present and, as usual, silent. I could not help however saying a word to this effect: "I am very glad you like the news, but I hope you will remember one thing that you are making a precedent which in the long future we intend to follow. You are now ready to introduce all possible privileges for neutrals in the carrying trade but in the long run Great Britain is at war ten years while we are likely to be one; and whatever precedent you set now we shall hold you to."

Finally, I will add that I have one criticism to make on our representations to Great

Britain, and that is that they understate our case. We have a complete right in international law as a neutral nation to unhindered and unlimited trade in all articles of every nature with other neutral nations under one single restriction, viz: the right of a belligerent warship to stop and search a neutral merchantman, on reasonable suspicion, for contraband of war originally intended by the neutral shipper or owner for the enemy of the government to which the searching warship belongs, and, in case of confirmed suspicion, to take the merchantman into a port of its government and deliver it into the jurisdiction of a prize court of that government.

As I understand it, we are insisting as a neutral nation upon trade with other neutral nations only in non-contraband of war, while we have a perfect right to trade also in contraband of war with other neutral nations to any amount, provided only the contraband articles are consigned *bona-fide* to inhabitants of these countries and sold in their markets,

and also the right to trade with belligerent countries in non-contraband articles, except through blockaded ports. We should not yield a single one of these rights by treaty, agreement, or acquiescence during this war. We should insist upon their observance by all the belligerents impartially, and if they are infracted, as they have been and may continue to be, we should keep a strict account of the injuries, under continual protest, and when peace is once more vouchsafed to the world, demand a full and honest settlement upon the basis of well-established principles, or, if the pressure becomes now too grievous, suspend all commerce with the offending power or powers immediately.

It is one of the pet hypocrisies of British diplomacy, not imposed indeed upon itself, but upon the other governments with which it has to deal, that injuries to person, whether incidental or intended, must be dealt with through preventive means, while injuries to property may be dealt with by a settlement at some future time. As a pro-British lawyer

recently expressed it to me: "Injury to person must be dealt with by injunction, but injury to property may be satisfied by a subsequent suit for damages." The fallacy in this is that there are certain injuries to property for which no damages will adequately compensate and that such injuries to property must also be dealt with by injunction. Every equity lawyer knows that they are so dealt with.

Now the injuries inflicted by the British practices upon our trade and commerce in this war are of that nature. They can never be compensated by damages collected at the end of the war, or even now. It is international law, established by the Geneva award, that only *direct* damages can be recovered, and they, it is well known, never amount in such cases to a tithe of the real damage. Besides, there is the affront to sovereignty and the flag involved in such unlawful treatment of the rightful commerce of neutrals which no subsequent payment of damages can ever make good. As things

stand at this moment nothing short of a vigorous retaliation against the British practices will defend our normal trade rights against the arbitrariness of the British Government.

CHAPTER III

THE LEGAL STATUS OF THE ARMED MERCHANTMAN AND THE UNARMED SUBMARINE

IN attempting to fix the legal status, under existing principles, of the armed merchantman and the unarmed merchant submarine, we must keep constantly in mind, first, that as all submarine procedure against merchant vessels, armed or unarmed, is a new thing, there are no rules of international law directly applicable in regulation of the same, and, second, that rules for this purpose must be developed, by the process of analogy, from the rules governing the procedure of cruisers against merchantmen, with such adjustments as the nature of the new warship reasonably requires.

I assume that the submarine is universally received as a legitimate weapon of war, else

we ourselves, as well as the rest of the world, would not be constructing them as such.

In deriving rules by analogy from one situation or relation to be applied to another, the greatest care must be taken, and every difference of condition must be drawn into consideration and given its due weight.

In the matter we are discussing, the all-important difference, the difference which governs the question, is the fact that on the surface of the water the cruiser dominates the merchantman completely, while the armed merchantman, on the other hand, dominates the submarine.

Therefore, while we are warranted in adopting, by analogy, the rules regulating the relation of the cruiser to the enemy merchantman for the relation of the submarine to the *unarmed* enemy merchantman, we are not warranted in doing so, without modification, where the enemy merchantman is armed, or is furnished with the means of calling prompt assistance, or is under orders to ram the submarine.

Neither do I think that the distinction between armament for offensive purposes and that for defensive purposes will hold in this derivation by analogy of the rules for governing the action of the submarine against the armed merchantman. Any armament of the merchantman, whatsoever, makes it dominant on the surface of the water over the submarine and, therefore, deprives the latter of its right of safe and unresisted visitation and search. The ability even to ram the submarine is a great danger to it.

I am compelled, therefore, to the conclusion that, if we recognize the submarine as a legitimate weapon of war, we must, in deriving by analogy from the rules of cruiser warfare the rules which should govern submarine action toward the enemy merchantman, class all armed merchantmen as warships, while upholding the immunity of the unarmed merchantman strictly according to the existing rules governing the relation of the cruiser to the same.

I think this is the proper solution of the

question from the point of view of legal theory. I also think it the proper solution from the point of view of American interests. Until we shall have constructed the most powerful navy of battleships, cruisers, and other surface craft in the world, we would be following a suicidal policy to be urging, or assenting to, the formation of rules governing submarine warfare which would deprive us of an effective defense by submarines of our own coast or of an effective means of preventing access to the coasts of Canada or Mexico by any foreign Power seeking to make either one of these a base of operations against us.

Third, as to the question of warning our citizens against traveling on the armed merchantmen of the belligerent Powers, of course if all armed merchantmen of belligerents are classed as warships, this question would solve itself. Any American citizen traveling on such a ship would do so at his own risk, with or without warning from his government. So long, however, as armed merchantmen are

not considered by our Government as so classed, we must have recourse to the proclamation of warning or else be continually exposed to the chances of serious foreign complications at the will of any citizen. The questions as to the signification of the warning and as to the body which in our political system has the authority to issue it may be answered easily and concisely. The warning would be simply a disavowal of responsibility by the Government for the security of the individual who persists in doing the thing against which the warning may be proclaimed. It would not forbid his doing it, but would simply notify him that if he does it he must do it at his own risk, and, in case of injury, must not require or expect the Government to reimburse or avenge the same.

The matter of warning is, therefore, not a question of diplomacy or of international law or of international relations at all. It is, first of all, a purely domestic question, since it is simply the question of how far a government can and will assume responsibility for

the results of the acts of its own citizens. It becomes a question of diplomacy or foreign affairs only after the Government shall have assumed such responsibility and undertakes to deal with the foreign state charged with inflicting the injury.

As a domestic question it is, therefore, a question of internal law, a question, so far as the Government of the United States is concerned, *to be settled by the provisions of the Constitution or the Statutes of Congress, and not by the Executive.* All the talk about robbing the President of a diplomatic power by Congress assuming to settle this matter rests upon a misconception of the nature of the question. The only power which the President constitutionally possesses upon this subject is his power to approve or veto the Congressional Act. If the act declines responsibility for the security of a citizen in a certain event, then the happening of the event does not concern the President or demand any action on his part.

In my opinion, some nations have gone too

far in assuming responsibility for injuries to their citizens or subjects in foreign countries and in certain unclear situations. It has led to continuous turmoil and war and also intentionally to conquest. It will be an improvement if the responsibility of government for the security of its citizens when outside its own territorial jurisdiction be more strictly defined by law, and the citizen not encouraged to consider every privilege he may, by custom, enjoy in a foreign country or, at times and under certain conditions, upon the high seas, as a right, the enforcement of which may be demanded by him of his government without any regard to the exercise of individual prudence or to the convenience and welfare of his fellow citizens and his country or the peace of the world.

Finally, it must not be overlooked that there is a good deal of deceit and hypocrisy mixed into all this controversy about the right of a citizen of a neutral country to travel upon belligerent merchantmen in declared war areas. We are manufacturing and sell-

ing billions of dollars' worth of war munitions to Great Britain and her allies. It is not considered unneutral for a neutral government not to prohibit its citizens from carrying on such trade so long as it does not reach such dimensions as to make the neutral country a real base of supplies for one of the belligerents against the other. But the belligerent purchaser must take the risk himself of the delivery of the munitions. His enemy is within his right to capture or destroy them if he can. The main object of German submarine warfare around the British coasts is to do this; and the main object of getting American citizens to travel on these merchantmen carrying contraband of war is to shift the duty of securing the delivery of these munitions from the shoulders of the British navy to the Government of the United States of America, under the cloak of the claimed legal duty of the Government of the United States to hold the belligerent operating the submarine warfare against the munition ships of its enemy to strict accountability

for any injury happening to an American citizen by reason of a submarine attack upon such ships. To my mind the point of real humiliation to our country, our people and our Government is that we should permit ourselves to be used for one moment for such a purpose.

Fourth, concerning the treatment which the Allied Powers threaten to apply to all submarine vessels owned by their enemies or their enemies' subjects or citizens, I would say that, from a legal point of view and regarded entirely objectively, the position assumed by the Government of the United States, that unarmed submarines and those armed solely for the purpose of defense, and carrying freight or non-combatant passengers or both, are merchantmen and entitled to all the consideration due such by the rules of international law, is founded upon sound reasoning and corresponds completely with all of our established precedents and policy. An enemy warship has, therefore, only such rights against such a submarine on the high

seas as it has against any other merchant vessel, viz., the right to approach it and halt it, to visit it and search it, in order to determine its character and its cargo, and then to dispose of it in accordance with the rules of international law governing prizes, always safeguarding the lives of crew and passengers. If after warning to stop and submit itself to visitation and search, the submarine merchantman should resist or undertake to escape, either by flight on the surface of the water or by submerging, the enemy warship would be within its rights to fire upon it and destroy it; but only under such conditions.

The attitude which, in my opinion, the Government of the United States should take toward the government responsible for a belligerent warship which should violate these rules, in case American life or property were involved, should be stern and uncompromising. It should hold such government to strict and prompt accountability, and require the immediate cessation of such prac-

tices. Especially should our Government assume this attitude in the present situation of the world.

There are some fifty-seven sovereign and independent states in the world, occupying a territory of about fifty millions of square miles, inhabited by about 1,600 millions of men. Of these fifty-seven, the three great Colonial Empires, Great Britain, Russia, and France, hold in their possession fully one-half of the world's land area and population, besides controlling the entire sea area of about eighty millions of square miles more. This leaves for the other fifty-four states a little less than one-half of the land area of the world, one-third at least of which is worthless, as desert, swamp and ice field, and practically none of the high seas.

While these three great Colonial Empires stood apart there was some limit upon their expansion and some chance for the other states of the world to develop their international trade and commerce, but now that they have succeeded in forming a great mili-

tary trust for crushing the two great states of middle Europe, and a great economic trust for permanently ruining the trade and commerce of these and of all other countries or persons who may be in any way connected with them commercially, these Colonial Empires are menacing the entire world with economic dependence or economic ruin.

Every effort, therefore, of the Central States of Europe, or of any other state or people to break through this vast and vicious Colonial Empire Trust and give the world the freedom of the seas and the open door should meet with our profoundest sympathy. If the submarine merchantman shall prove to be an efficient instrument in accomplishing this great result, its advent should be hailed, and its rights jealously protected and guarded by every nation not engaged in sinking its own economic independence and prosperity and in helping the three great Colonial Empires to the possession of the whole earth.

CHAPTER IV

THE PROPAGANDA

NOW we have a new term with which to terrorize the weak-minded — the propaganda. The term is well chosen. It has a sinister ring. It sounds like anaconda or boa-constrictor, or something of the reptile world.

But really, what is a propaganda? Abstractly, it is any means for spreading the knowledge of any truths or principles or doctrines and securing their acceptance. The greatest example of a propaganda which the world has ever known is the Christian religion and the Christian church. A university, a college, a school, a scientific association, a literary club, is a propaganda, and any teacher is a propagandist.

A propaganda does not then appear, when we approach nearer to it, to be such a monster, after all. It seems to be only a

comprehensive term including in a general way all the means made use of for spreading knowledge. It is, however, *the* propaganda that we are out for, not *a* propaganda. An unsophisticated mind would be likely to define *the* propaganda as *a* propaganda in reference to a particular subject.

What then is the particular subject which renders the propaganda, about which many newspapers have raised such an ado a work of terror and abomination? If I understand it, it is the attempt made by certain men and women to influence the Government of the United States to lay an embargo on the exportation of arms and munitions of war, and the means of the propaganda are any association or understanding for combined effort to bring about this result.

In the representations made by some of the newspapers they go even further than this and include the independent efforts of the individual for this purpose. Some of the newspapers have already denounced these efforts as approaching treason against the

country, and many of them are evidently making daily advance upon that line — I will not say of thought, but of reckless assumption. They are gradually developing, however, their course of reasoning, or rather, something which they seem to think a course of reasoning, in arriving at this result.

Let us try to analyze this something, although in doing it we may commit the logical offense of stating the steps in the process a little more distinctly than they have done.

They start from the postulate that, according to the declaration of our state department at Washington, an embargo laid by our Government on the export of arms and munitions of war would be an unneutral act toward the belligerent, or belligerents, who might be disadvantageously affected thereby.

Second, that an embargo on the export of arms and munitions of war, being an unneutral act, according to the declaration of our own Government, would give the belligerent suffering disadvantage from the same a just cause for war upon us.

Third, that the effort of any person individually or of any number of persons in combination to influence the Government to embargo the export of arms and munitions of war would, therefore, be, in effect, an effort to involve this country in war with the disadvantaged belligerent or belligerents.

Fourth, that such an effort is, therefore, of the nature of treason against the country.

And, fifth, that it should be suppressed and dealt with as such.

As I have said, they do not all state this scheme of ratiocination quite as clearly as I have done, but it is evident to a close reader of the daily papers of the East that such is the doctrine which they are gradually evoluting, and it is the part of wisdom to expose its purposes and sophistries before, by repetition simply, it gets its grip upon those who have not the ability to resist the power of continuous assertion.

Let us, therefore, take the elements of this vicious scheme apart and examine them one by one.

First, then, the declaration by our Government that an embargo of the export of arms and munitions of war would be unneutral. In the official note of the state department to Austria-Hungary of August 12, 1915, it is said that neutrality is "opposed to the prohibition by a neutral nation of the exportation of arms, ammunition, or other munitions of war to belligerent powers during the progress of the war."

Two questions in regard to this declaration will arise immediately in the mind of any publicist. The first is whether this is a true statement of the public law of the nations of the world in regard to this subject. I do not think it is.

I have read all of the received textbooks on public law, both international and internal, and I cannot remember any such doctrine, or even an approximation to it, except in one case, where it was barely suggested by a rather insignificant author.

Quite on the contrary, the generally received doctrine of public law is that an

embargo on the exportation of arms and munitions, as upon anything else, is a domestic question for each country to determine for itself, quite independently of its effects upon any other country, at any time, and solely in accordance with the interests of its own citizens or subjects.

This is the American doctrine, and also the British doctrine, as distinctly announced by the British Government in 1870, when it was applied to by the North German Government to embargo the exportation of war munitions to France. Moreover, the Government of the United States has embargoed munitions of war more than once in the midst of a war.

The only limitation which the international obligation of neutrality toward all belligerents imposes upon the exercise of this domestic power by each neutral country for itself is that if an embargo be laid it shall be directed against all belligerents alike, and if it be not laid or be laid and then lifted it shall be so towards all belligerents alike, and

that the neutral country shall not make itself a real base of supplies for either belligerent.

It is quite clear that if the obligation should reach any further than this it would impair the sovereignty and independence of the neutral nation in regulating its foreign commerce and would bind it, willingly or unwillingly, to supply belligerent nations with the means of pursuing a policy possibly quite disastrous to the interests of the neutral country.

In other words, the laying or not laying or the lifting of an embargo is not a topic of international law, but of the domestic law of each nation, and each nation may, so far as international law is concerned, exercise the power of so doing at any time without the slightest concern as to how the consequences of the same may affect the fortunes or interests of the belligerent nations.

The second question in connection with such a declaration which suggests itself is who, under our Constitution, has the power to make an authoritative declaration of this

kind, so that it will bind this country over against a belligerent Power and thus give that Power a cause of war against us in case we infract it?

The Constitution does not expressly provide, but all the principles of interpretation of our organic law give but one reply, and that is that either the body which has the power to lay the embargo is the body which determines for this country whether its act comes into conflict with any higher law, or else the Supreme Court of the United States.

Neither the Congress, the department of Government which alone, under our Constitution, can lay an embargo, nor the Supreme Court of the United States has ever declared that it would be unneutral for this Government to lay an embargo at any time or for any reason which might seem proper to it, and therefore this country is not legally bound and cannot be legally bound by any declaration of the state department that it is or would be.

Neither, therefore, is any citizen of these

United States nor any combination of citizens placing the country in any danger of a just war being made upon it by any foreign Power by agitating in favor of an embargo on the exportation of arms and munitions of war. They are only exercising their constitutional right of free speech and of petitioning the Government for the redress of what they consider to be a grievance.

If any embarrassment should come to the country in consequence of such action on their part the responsibility for it could not be charged to them, but to whomsoever made that unwarranted and unnecessary declaration.

I am old enough to have had the experience in the history of our country of a somewhat similar and equally pointed case. I refer to the famous Dred Scott decision, where the Supreme Court of the United States, under the pressure of the slaveholder plutocracy, declared that Congress did not have the power to exclude or abolish slavery from the Territories of the United States,

and many of the leading newspapers declared that anybody who should thereafter insist upon Congress doing so would be disloyal and a traitor to the interests of his country.

Now this dictum of the Court was not necessary to sustain the judgment of the Court. It was *obiter dictum,* as the lawyers call it, and Mr. Lincoln at once attacked it as such and held, amid the fiercest denunciations heaped upon him by the newspapers, that it did not restrain Congress from prohibiting slavery in the Territories, nor make the conduct of any man disloyal to his country who should agitate for such an act by Congress.

Mr. Lincoln went further and said that, even had the judgment of the Court been that Congress could not prohibit slavery in the Territories, still any American citizen would be only exercising his right of free speech who should agitate for convincing the Court that it had committed error and persuading it to reverse its judgment, or for moving the people to secure a constitutional

amendment overriding the judgment of the Court.

There was danger of civil war, it was said, following upon such agitation. Civil war did follow it. But were Mr. Lincoln and the Republican party responsible for it, or were those who made this agitation necessary and inevitable by attempting to crush the freedom of speech by a judicial declaration and to extend slavery over the Territories of the Union?

Now we have come around again to a similar situation.

When the war in Europe broke out in August of 1914, the circle of high finance in this country was highly disturbed by it. These men thought that the moment had arrived for a new period of prosperity, and to see that for which they had been for some time impatiently waiting indefinitely postponed was a great disappointment. In their anger they looked about, as men usually do, for the scapegoat.

They knew very little about European

politics and European history, and they had no appreciation whatsoever of the idea that, possibly, the world had arrived at one of those epochal moments when its movements are not guided by any particular man or set of men, but by the necessities of the many, by the forces of progress, by the destiny of man.

One European personality, however, stood out above all others in the scope of their vision. Not the Czar of all the Russians. He was to them not much more than a title. Nor the King of Great Britain and Ireland. He was overshadowed by his Ministers. Nor the Emperor of Austria-Hungary. He was known to them chiefly as the oldest ruler in Europe. Nor the President of the French. It is doubtful if many of them knew his name. Nor Peter of Servia. But the German Emperor, "the crafty, powerful Hohenzollern, the war lord of Europe, backed by Prussian militarism."

They had all heard of him, and Prussian militarism was one of those misunderstood

terms which carry terror into the hearts of the weak-minded. Here was, as they thought, the strange, half-insane being who had presumed to challenge the world to combat. Here was the scapegoat.

Then they proceeded, as we Americans generally do, to count noses, to get at the numbers, the relative quantities concerned, and they found that Great Britain, Russia and France, occupying more than half of the 50,000,000 of square miles of the territory of the earth, could draw soldiers and supplies from over 700,000,000 of people, while Germany and Austria-Hungary, occupying some 500,000 square miles of the earth's surface, could draw soldiers and supplies from only about 120,000,000 of people.

They did not think of the difference in physical, mental, and moral soundness, in capacity, efficiency, education, training, discipline, unity of action, and consciousness of purpose, obtaining between these two groups. They reckoned only by size and number. And so they began building the fabric of

high finance on the assumption that Great Britain, Russia, and France would certainly triumph in the struggle.

The trade in arms and the munitions of war began and is now in full swing. The banking interests have become involved in the financing, at large profits, of the payments for these vast orders of death dealing implements. Schemes are even talked of for drawing our federal reserve banks into the service of the munitions of war trade.

Most of the influential newspapers, especially of the East, advocate the legitimacy and recommend the expansion of this trade. High society is interested in it and in favor of it and applies the pressure of the social boycott to those who may be wavering. Even the ministers of the gospel in fashionable pulpits condone it.

Notwithstanding all this the still small voice of conscience is to be heard on every side protesting against it, especially from the ranks of the plain people. One says, " It is inhuman to be furnishing the weapons of

slaughter;" another, that "we are raising up a power in our own midst whose selfish interest is for the incitement and continuation of war;" another, that "we are helping to disable the Europeans from legitimate trade and commerce with us after peace;" and another still, that "it is fastening ever stronger the hold of the plutocrat on the country."

All these things are true, and they cannot be successfully met by argument. Therefore, they must be smothered by authority. The people must be told that there is a power above the power of their own Government which disables that Government from laying an embargo on the exportation of arms and munitions of war during this terrible world conflict, except at the risk of being made subject to its horrors themselves.

And so the grand combine for the prosecution of this degraded and degrading traffic are able to take refuge against the assaults of popular conscience under the dictum of the state department that an embargo upon the exportation of arms and munitions of war by

this Government would be unneutral and is therefore forbidden by international law, and to cry down all protests against the traffic as disloyal, and to urge the Government to restrain and suppress them.

The parallel with the situation in 1857 is thus practically complete, and the issue is the same, viz: to suppress by authority, assumed authority, the freedom of speech and of petition in regard to a matter which is regarded by a vast number of American citizens as an intolerable grievance, a national sin and disgrace.

Now will this parallel go further? Will the manufacture and exportation of arms and munitions expand and expand? Will high finance and the financial institutions of the country become more and more involved in the traffic? Will the Government insist more and more strongly that the nation cannot, without a breach of international law, put an end to it? And will the newspapers and the fashionable pulpits ask for the suppression of protests against it?

If so, woe betides the nation. I have never for one moment supposed that this country would go to war with Germany. A nation not composed of lunatics does not go to war with another nation always friendly to it, because of accidents which happen to a few of its citizens in a war between that nation and another foreign nation. Neither have I supposed for a moment that this country would go to war with Great Britain. A country averse to war will find other and more effective ways to get compensation for commercial injuries and losses and for preventing their recurrence in the future than the self-destructive means of war and bloodshed.

I do not believe that there are many persons in this country who want war either with Germany or Great Britain. I do not think that even those persons who are engaged in the manufacture and exportation of munitions of war and in financing the same want it. Such war would not be for their interests. What is for their interests, what they, therefore, really desire is an indefinite continuance

of the war in Europe and free exportation of arms and munitions of war from this country to the warring nations. But the rising conscience of this country will not be satisfied with an indefinite expansion and continuation of this traffic. Moral behests and permissive law will come into conflict over this matter. That is the "irrepressible conflict" again.

One of the plain people said to me the other day: "What an opportunity we have lost for the leadership of the world in righteousness as well as power! We should have said to the warring nations at the outset: 'We do not approve of war save in self defense, therefore not a weapon of death nor a pound of ammunition can any of you have from us. We will send you all the food and clothes, everything to support and prolong life, which we can spare, and to all alike, and if any one of you attempts to cut off these supplies from another we will withhold them from that one.'"

This is the thought which is running

through the minds of very many of the best people, and it pictures the situation which they wish to establish now, and no combine of capitalists, no class in the society, no anti-Christs in the pulpit and no governmental dicta can suppress it.

It is a question between the moral sense of the many and the sordid interests of a class sustained by a government dictum, and if ever and whenever it comes to the point where it is evident that the maintenance of those interests requires the suppression of the freedom of speech in expression of that moral sense and in developing and spreading it, then will this nation have internal trouble enough to engage all of its energies.

As loyal and patriotic citizens, we should use every effort to prevent this question from coming to such an issue, for it would mean, in the long run, social revolution, as surely as the issue of 1857-65 did.

Plutocratic power is trembling everywhere at this moment. A political democracy which produces an economic plutocracy is a sham.

The democracy of the nineteenth century did this, and the people are beginning to understand it. The deepest meaning of the great struggle in Europe today is the passing of plutocracy. To increase its hold upon this country by traffic in munitions of war and maintain this traffic against the better conscience of the people by any attempt, governmental, social, or otherwise, to suppress the free expression of that conscience is the most dangerous thing to the peace and prosperity of this country that could possibly happen.

The only way to forestall such a danger, as things have now formed themselves, is for the press, the pulpit, society, and governmental officials to cease all this silly talk about the propaganda and the disloyalty of citizens who protest against the exportation of arms and munitions of war as being contrary to the best interests of the country, both moral and material, and welcome and participate in the fullest and freest discussion of the question from every side, and when the mind and conscience of the nation shall have become fully

informed and made up upon the subject, to acquiesce in and sustain its will as expressed through its representatives in the Congress of the United States, the only body, under our constitution, which has the power to lay an embargo and authoritatively determine what the consequences and responsibilities, if any, of the same may be as to other nations, the only organ of our government which can authoritatively determine what the requirements of international law are for the citizens of the United States.

So long as the propaganda is addressed to the head it is not only harmless, but beneficial, and not only beneficial but absolutely necessary in the maintenance of free government and in the advance of civilization. It is nothing but the exercise of the freedom of thought and of speech, without which truth and sincerity will perish from the earth.

It is, on the other hand, when addressed to the pocket that it becomes a deadly poison, benumbing conscience, blinding intelligence and demoralizing character. It is this kind

of propaganda, on the part, both of the preacher of it and the yielder to it, that knows no truth, no morality, no patriotism and no humanity. It is this kind of propaganda which every intelligent and honest man and patriot should regard as the reptile which is tempting, corrupting, and destroying the virtue of our institutions and our manhood.

CHAPTER V

WHEN AND HOW WILL THE WAR END?

THIS is a question which is upon every lip, though few persons have the hardihood of the information to venture even an approximative answer. The chief difficulty is that the answer is undertaken in the units of time and supposed military and financial strength. Few minds comparatively regard this great world movement from the standpoint of world philosophy and the law of world development. Epecially is this true in these United States of America. Not one per cent of all that has been written in American books and in the American daily press has touched in the most remote degree the real causes and purposes of this war as viewed objectively, impartially, and intelligently from the standpoint of the world's history, the world's progress, and the world's necessities. Most have spoken or written

under the influences of personal sympathy or hostility, or family relationship or social connection, or financial interests. Such purely personal points of view can never furnish a ground of vantage from which a great movement of history can be observed and followed. The utterances — I will not call them opinions — of those operating from such basis are conflicting, confused, in part childish, in part senile, and in part malignant.

A very large number see the titanic struggle chiefly from the point of view of the conduct of the war. Some of them appear to have become crazed about the violation of Belgian neutrality, and the so-called Hun atrocities. They generally know nothing about the attitude of Belgium during the eight or ten years preceding the war, and they seem to ignore in their wild vituperation the testimony of many most credible men such as our own newspaper correspondents on the ground, while not a few holding opposite opinions contend that the real atrocities committed in this war have been those practised

by the Russians chiefly in East Prussia. All seem to forget, however, that an army in the territory of the enemy is always accused of atrocities. The condemnation by the British press especially of the conduct of the armies of the Union in the South during the Civil War was almost as violent and certainly as exaggerated and misleading as anything we read or hear now. And if one will just go down to Mexico City today one will hear good men saying that the *Ypiranga* case was a far more aggravated breach of neutral rights than the *Lusitania* case. The latter was the case of a *belligerent* attempting to prevent a ship of its *enemy* from delivering to its *enemy* arms and munitions of war by sinking the vessel in sight of *its enemy's coasts,* with the incidental drowning of citizens of a neutral nation. The former, however, was the case of a *non*-belligerent attempting to prevent the ship of a *friendly* nation from delivering arms and munitions of war to the government of another friendly nation, by seizing the port and city at which the arms

and munitions were to be landed and incidentally killing private citizens as well as soldiers of the invaded friendly country in the accomplishment of the deed. To the Mexican mind the *Ypiranga* case is the Belgian case and the *Lusitania* case rolled into one.

It is of very great advantage that we should see others as others see us when we feel ourselves inclined to indulge in the abuse of the conduct of other nations in the prosecution of war. Still this is not the exact point of my present contention. I am attempting now to demonstrate that a too-pronounced contemplation of the alleged methods used by nations in the prosecution of war is certain to lead us away from a real comprehension of the great underlying development which is being accomplished through the war. The effeminate always regard the vigorous as brutal, and generally the vanquished regard the victor in the same light.

Many again have regarded the great subject, the greatest of the world's entire history,

from the point of view of the supposed likeness or unlikeness of the internal institutions of the different belligerents with those of the United States. They have rung the changes upon the so-called "Prussian militarism," until every letter in the phrase has been worn to a shadow, and have proclaimed that the sole purpose of the war is the utter elimination of this monster from the world. They have manifested little or no knowledge as to what Prussian militarism is, and they seem to have forgotten that, in accordance with that fundamental principle of international law which forbids the interference of one sovereign state in the internal affairs of another, it is none of their business how Prussia or Germany or any other state may choose to organize its army or navy. They think they have fairly plain sailing in likening the internal institutions of Great Britain and France with those of the United States, which shows quite conclusively that they do not understand the internal institutions of either one of these countries and have no

acquaintance with the real way in which the governments of either of them is administered. They have some trouble, it is true, in reconciling the internal institutions of Russia with those of the United States, and usually skip lightly over this part of the undertaking.

Very little has been said or written from the point of view of the likeness of German institutions to those of the United States, although to such men as are thoroughly acquainted with them that likeness appears much stronger than what obtains between French and American institutions and equally as strong as what obtains between British and American institutions. It is not my purpose, however, to go into any criticism of these comparisons, either as to the correctness or incorrectness of the representation of the things compared or as to their likeness or unlikeness. My contention is simply that the differences in the internal institutions of the several countries of the world now engaged in the most gigantic

struggle of the world's history or their similarities furnish no sufficient point of view from which to determine the causes and purposes of this vast upheaval in human society.

If we would understand the great movement we must be able to take an international point of view, a view from which we may observe the evolution of the different peoples and countries of the world and their contact, both political and economic, with each other.

The land surface of the world is, in the rough, about fifty millions of square miles and the water area about eighty millions. At the outbreak of the war there were fifty-seven independent and sovereign states under which the people of the world, numbering some sixteen-hundred millions of human beings, were politically organized; in Europe, twenty-five; in Asia, twelve; in Africa, three; in North and Central America, seven; and in South America, ten. Of the fifty-seven, three had become, especially by the developments of the last fifty years, the three great Colonial Empires of the world. These three

were, and still are, Great Britain, Russia, and France. Together, they, on the first day of August 1914, held sway over more than one-half of the land area of the world and over very nearly all of the strategic positions of maritime importance, which enabled them to make good in unison, at least, what one of them alone has long claimed, namely, the sovereignty of the seas. Down to the year 1914, the three had never been able to work in unison. On the other hand they had arrived at the height of their power more or less in conflict with one another. Especially had Great Britain and Russia regarded each other as natural enemies, chiefly on account of their conflicting interests in Asia and in the Levant. Down, at least, to the year 1907, British statesmen had considered the first point in their imperial colonial policy to be the holding of Russia back from Constantinople, Alexandretta, and the Persian Gulf. On account of these divisions of interest between the three great Colonial Empires, the other states and peoples of the world were able to

get along commercially and internationally in some shape or other. The test of the world's endurance of the Colonial Empire system was not thus reached so long as the three Colonial Empires had not reached the point of pooling their interests and their efforts in one gigantic economic trust.

Moreover, the nineteenth century was the age of political, rather than economic development. It was the era in which the great states of the world, especially the European and American states, were taking on their present governmental forms, and in which the Colonial Empires were establishing order among uncivilized men in the possessions which they had seized, and teaching uncivilized men the first lessons of labor and obedience. It was the period when the Colonial Empires appeared at their best, as the missionaries of civilization, "the bearers of the white man's burden." It was the period preparatory to that of economic exploitation. The other states of the world were occupied chiefly with their own internal

affairs, had little ambition and less ability to take upon themselves the rôle of world Powers and were tolerably satisfied with the trade leavings that the Colonial Empires flung to them. It was requisite that the activities of the world should turn principally from the political to the economic before the necessities of the world over against the Colonial Empire system of the three great Powers should so manifest themselves as to influence these Empires to approach each other in the defense of that system and for its perpetuation. During the last quarter of the nineteenth century this transition from the political to the economic began its course, and during the first decade of this century it became clearly manifest that the economic reorganization of the world is the problem of the present century.

It was no play of chance, but the order of the Providence which directs the world's development, that just at this moment in the world's history three new, powerful national states, situated nearly equidistant from each

other, all within the northern hemisphere, one in each of the three continents thereof, all without colonial dependencies, made their advent as world Powers, as Powers to be reckoned with in international relationships and world trade, and demanded their "place in the sun," the United States, Germany, and Japan. To the student who has his ear to the ground to detect the tramp of the march of the world's history, the thought that here are the Powers whom destiny had intended to break down the Colonial Empire system and lead the world to a new economic organization is irrepressible.

The Colonial Empire system in its economic development has produced and must continue to produce in ever increasing measure the excessive enrichment of the few and the beggary of the many, not only in the dependency and sometimes not chiefly in the dependency, but also and always in the motherland. That is the reason why the Colonial Empire always becomes a plutocracy, no matter what the nominal or the orig-

inal form of its government may be or may have been.

I have been asked many times during this war to explain how England and France could be in alliance with Russia, against Germany or against anything. The answer is simply they are all Colonial Empires, all plutocracies, no matter what their nominal form of government is. They are plutocracies from the influence of their world position as Colonial Empires upon their internal structures.

It is very clear that these three new world Powers, the United States, Germany, and Japan, what we may call the world Powers of the twentieth century, were not, and still are not, distinctly conscious of the rôle which they seem destined to play in the world's progress or of their natural sympathy of purpose. They had before their eyes the history and experience of the great Colonial Empires and they quite comprehensibly felt the impulse to follow the example of these and to acquire colonies and dependencies. It

is also comprehensible that the great Colonial Empires, having seized the most of what was valuable and attainable, should take the ground that the new world Powers had come too late to get anything of value not yet appropriated and that they could not expect the older Powers to divide with them. It was Germany, which, between 1890 and 1914, had to bear the brunt of the struggle with the Colonial Empires for a division of what of the world might still be made dependent. It was the Morocco question, as demonstrated in the second chapter of a previous volume,* around which the contest principally turned, and it was the wisdom which Germany gained in that experience which finally set Germany's face in the right direction, in the direction of the freedom of the seas and the open door throughout the world to the trade of all nations. During the period between 1890 and 1910, the period of Germany's great commercial expansion, Germany had added to her territory only

* The European War of 1914.

about two thousand square miles of extraneous land, chiefly for coaling and supply stations, and always by way of purchase or lease, while the three great Colonial Empires had added millions of square miles to their colonial areas, and almost always by means of war and bloodshed. By 1910 Germany had learned thoroughly that her destiny was not to become a Colonial Empire, but to win markets for her products throughout the world on the principles of the freedom of the seas and the open door throughout the world to the trade of all nations.

The three Colonial Empires saw their interests threatened by the rise of the new states, whether these should follow the course of demanding from the Colonial Empires a share of the dependent territory of the world or should set up the principle of the freedom of the seas and the open door throughout the world to the trade of all nations. The successful competition of the Germans in the markets of the world, even in the markets of their own colonies, despite the

preferential tariffs designed to keep them and other nations out, made it manifest to these Colonial Empires that the new economic system of world commerce and trade was perhaps even more threatening to their interests than the making over of a moderate share of their dependencies to the new Powers. These new Powers represented the efficiency necessary to success under the conditions of the twentieth century, and free competition with them in the world's trade might be the most disastrous thing which could happen to the antiquated system of the Colonial Empire. There is little doubt that these Empires felt this to be so. There is no doubt that this feeling overcame their animosities and drew them together for the defense of their system against the new principle and the new world Powers which would ultimately uphold it, which must ultimately uphold it, if for no other reason than because they could, in the existing condition of the world, do nothing else and live.

Of the three, Germany was far in advance

of the other two in equipment for the rôle of a twentieth-century world Power. It had created for itself the necessary political unity and organization, the necessary industrial system, the necessary banking and monetary system, the necessary merchant marine and the necessary navy, and had learned to use them all with an economy and efficiency unequaled by any other people of the world. Germany was so far in advance of the other two new world Powers in her equipment that they themselves have failed to realize, or have only faintly and partially realized, that their true position in the world's economy of the twentieth century is in company with Germany and not in company with the Colonial Empires.

But the Colonial Empires realized that Germany was the modern foe of their system most clearly, and their encircling and isolating policy applied to Germany from 1904 to 1914 and their military alliance of 1914 have the one purpose of crushing out of existence this prime representative of the new

principle of world trade and commerce. They call it the crushing of "Prussian militarism," but what they really mean is the crushing of the whole power of Germany — political, military, naval, commercial, industrial, and economical — as the arch enemy of the Colonial Empire system, with its plutocracy, its privileged, its proletariat, its archaic methods, its trade fetters, its insatiable land greed and its eternal state of war, and as the standard bearer of the new principle of the freedom of the seas and the open door everywhere, which will give every people an equal opportunity in the markets of the world, will do away with the struggle for colonial and dependent possessions, will make efficiency the only pre-requisite of success, and will displace plutocracy and privilege by a genuine economic democracy.

But why, the historian and publicist will ask himself, did not, and do not, the other two new world states recognize their unity of purpose with Germany, why did they not throw their lot in with her in August of 1914,

or at least remain strictly neutral, and assist in bringing the antiquated Colonial Empire system to the ground, or at least not assist in preserving it? Why is Japan an ally of the Colonial Empires and the United States so benevolent in its neutrality towards them? As I conceive it, the answer is different in the two cases and reflects, at least, less discredit on the United States than on Japan. And here again we have to deal with the problem of nations slowly awakening to the consciousness of their destiny. Even Germany has had to pass through the purgatory of being stripped of what few colonies she possessed and of having her commerce driven from the seas and her ports closed to neutral commerce by all sorts of means, foul or fair, before coming to realize fully her great world duty. Little wonder then that the other two should be groping in the dark and grasping at what appears to them to be of immediate advantage.

It is generally remarked that the Japanese are, above all other traits, imitative in their

genius. It is quite natural that, upon their advent as a world Power, they should have been attracted by the example of the great Colonial Empires and should have inclined to follow that example. The occupation of Corea encouraged this line of policy. Finally the temptation offered by Great Britain and Russia to share with them in the spoliation of China and other parts of Asia proved irresistible, and Japan has for the moment, at least, abandoned the great mission which she as a twentieth-century world Power seemed destined to bear. Japan, under the prospect and promise of becoming a great Colonial Empire herself has leagued herself with the big three, and made of the combination the big four, for the domination of the world politically and economically.

Let us imagine for a moment what the condition of the world would be in case of the triumph of this combination in the present war. It would hold three-quarters of Europe, the whole of Asia, the whole of Australasia, the whole of Africa, the half of

North America and the whole of the high seas. How long would it take this big political and economic trust of these four Colonial Empires to bring the people of the other fifty states of the world into commercial and economic dependence upon it and then their governments into political dependence upon it? Right here is the real danger to the freedom of the world and nowhere else. The triumph of this combine of the great Colonial Empires in this war, will, if they hold together after the war, bring all the rest of the world into a relation of abject dependence upon it, and, if they do not hold together after the war, will fill the entire world with unceasing strife. It is said that the Japanese have a very friendly feeling for the Germans. Possibly this is some evidence that the Japanese are dimly conscious that they are not playing the rôle destined for them by the genius of history as the great Asiatic state in the combination of modern world Powers for the realization of the international principle of the twentieth century of the freedom of the seas

and the open door to trade throughout the world. It is difficult to see how Japan can withdraw from this false position, in case of the triumph of the Colonial Empire combine in this war. In case of its defeat, the plan for the spoliation of China will be brought to the ground and Japan may recover her natural position as a twentieth-century world Power and as a defender of that principle of commerce and trade under which alone the modern world can live in peace and prosperity. It is of vital importance to the United States of America that Japan should be foiled in her apparent plan and policy of becoming a Colonial Empire, the Colonial Empire of the Pacific. It would mean the seizure of, or at least the attempt to seize, all of the strategic points in the Pacific ocean from Alaska to Pago-Pago and the exposure of Mexico and California to attack and invasion. It is of the first importance to the United States that, in addition to the pressure of the Colonial Empire system on the east and north, they should not be

made subject to it also on the west. The spirit of the Colonial Empire system knows no bounds. Its law is expansion, always expansion. If it gets a firm hold upon a people of the peculiar personal and public conscience of the Japanese, as it will do in case of the triumph of the Colonial Empire trust in this war, it will make of them practically a nation of organized adventurers. Defeat in its present undertaking will alone bring Japan back to its natural mission as an exponent of the modern principle of world politics and economy. It will be best for Japan; it will be best for Asia; it will be best for America; and it will be best for the world, that it should be so. That this new world Power should give renewed vigor to the decaying Colonial Empire system and enable it to maintain still longer its paralyzing hold upon a new world with its new necessities and ideals would be a world-historic catastrophe of the first magnitude.

And now we come to the most difficult problem of our task, namely: to account for

the attitude taken by the United States of America towards the great world movement which is being realized through this war. One would think that, with the experience which this Republic has had from the earliest beginnings of its existence with the Colonial Empire system, there could not have been the slightest confusion on its part in recognizing the import of the great struggle or the slightest hesitation in assuming and maintaining unswervingly its attitude towards it. We in America know that the Colonial Empire system, especially in advanced stages, is most dangerous to liberty, prosperity, and peace; that from the Roman Empire down through the history of the Colonial Empires of Europe it has been the arch-patron of conquest, tyranny, graft, and corruption; and that it does its true work only as a temporary institution and should never be encouraged nor allowed to attain the condition of permanence; that we ourselves feel the prickings of our national conscience in holding the Philippines, Hawaii, and Porto Rico, and are

continually tormented with the questions whether and when we should set them up for themselves; that our own national Government has developed autocratic powers in regard to them which we did not know existed in it; and that it is the opinion of a great many of the best among us that their further possession, unimportant as they are, is a menace to our constitutional liberty.

It must be said, of course, that, at the beginning of the war, coming as it did upon the world with such apparent suddenness, the minds of most were confused as to its causes and purposes. But now that, since June of 1916, everything has become perfectly clear as to the unity and policy of the Colonial Empires, both political and economic, both in war and in peace, there is no further explanation or excuse, from the points of view of intellectual integrity and genuine Americanism, for any loyal American to misunderstand in which direction the ideals and interests of our country lead; whether towards the perpetuation of the Colonial Empire sys-

tem, in its present form of a gigantic Colonial Empire trust, with its policy of making all other countries and peoples dependent upon it, economically if not politically, and absorbing or destroying such as resist, or towards the new principle, which teaches that the conditions of the twentieth century require the freedom of the seas to the commerce of all nations, the inviolability of private property on the high seas, the dissolution of the Colonial Empires as rapidly as their dependencies become capable of governing themselves, the treatment of dependencies by the holding country as peoples entrusted to it for their benefit chiefly and in the government of which the holding country should be considered rather as a trustee of the world than as an owner, and finally, as a consequence of this relation, the open door in all dependencies to the trade of all nations, for the welfare and civilization of the dependencies and of the whole world.

The man on the street and on the farm does not as a rule misunderstand in which

direction to find the interests of the United States pointing in this great moment and in this great issue. He will tell you that America must have the free seas and the open door; that the Colonial Empire system is antiquated, tyrannic, plutocratic, and unable to solve the economic problems of the twentieth century; that all the talk about the defense of little nations by the Colonial Empires, which have grown to their greatness by absorbing the little nations, is sheer hypocrisy; that all the splutter about Prussian militarism, Belgian neutrality, and Hun atrocities is either false, exaggerated, or irrelevant, and meant to obscure the real issues; that German frightfulness is only the energy, activity, celerity, and resourcefulness which one man must employ to save his life when attacked by five and from all sides at once; that if a reckless adventurer takes passage on an armed merchant-ship of a belligerent, or a ship loaded with munitions of war for a belligerent, he should bear the responsibility therefor and accept such acci-

dents as may come to him as his own personal affair, but that the government to which he is subject should not involve the country in the defense of such folly or possibly design to force the country to espouse the cause of one of the belligerents; and that the turning of the industries of the country into munition factories and making the country a chief base of supplies for one of the belligerents, is unneutral, hypocritical, inhuman, and, considering the natural enmity of the Colonial Empire system to all of our ideals and interests, is positively suicidal. These are the views which will be found to be held by the vast mass of what are usually termed the middle and lower classes, better designated as the plain people, the stock and stuff of the nation, the men and women who look through the cant of the Pharisees and break through the hypocrisies of the law.

On the other hand, what are termed the upper classes of the eastern or rather northeastern cities, especially the wealthy, either

by inheritance or by virtue of leadership in big business, and all those who come under their control and influence, socially or financially, and those who, as lawyers, teachers and writers, are engaged in inventing the morale of plutocracy and the stability and unchangeableness of the *status quo,* stand for the Colonial Empire trust with all the vigor, tenacity and passion of which they are capable, and in many cases carry their conduct towards those disagreeing with them to the point of personal hostility and injury.

Why in so plain an issue as that now finally set before us in this great world crisis do such people, in such large numbers, ignore the fundamental thing and cling, with a fanaticism which almost amounts to insanity, to the mere incidents in the prosecution of the war, the truth about which is still in dispute and uncertainty. As I look back over the world's history for the past thirty years, especially in regard to our own relations to the European States, the explanation of this phenomenon as it appears to me proceeds

from three chief sources, namely: the social, the journalistic, and the financial.

Down to the year 1875, the social, or more exactly, the society relations between the people, or any part or class of the people, in this country and those of Europe or any part of Europe, were very slight and unimportant. It is true that before the outbreak of the Civil War a few southerners of the slave-holding aristocracy had European social connections especially in Great Britain and France, and there is no doubt that these had considerable influence in determining the attitude of those countries towards that great struggle. The impoverishment of the South by the war and the aversion of the people of the North towards countries whose people had shown themselves hostile to the cause of the Union and human freedom, put an end, for the time being, to any considerable personal friendships between the people of the United States and the British or French. It was well for us that it was so, and it is unfortunate

for us, in some respects, that it ever became otherwise; because the period between 1865 and 1914 was the one of greatest dissoluteness and corruption in British and French high society since Charles II and Louis XV.

The description given of British society at this time by Anthony Trollope in such books as *The Way We Live Now*, etc., shows British high society in its decline. Idleness, fox-hunting, horse-racing, gambling, drinking, cheating, debt-making, mendacity, cant, hypocrisy, unchastity, unfaithfulness, and waiting and longing for dead men's shoes, even those of parents, were quite usual characteristics. It was into a society like this that the parvenu millionairedom of the United States of America was introduced in the era of 1880 to 1900. The sons and daughters of that newly created millionairedom were immediately fascinated by it and began to imitate it both in conduct and spirit. Especially the daughters of the American parvenus became the prey of a broken-down,

impecunious, title-bearing aristocracy, both in Great Britain and France. Chiefly through such marital connections, many of which have proved of short duration, happily for the poor girls, the society relations between rich Americans and titled Britons and Frenchmen have been established. It took some years to educate the original makers of American wealth into the new surroundings, as the famous schooling of the noted Mr. Pipp illustrated, but by the end of the nineteenth century and the beginning of the twentieth the thing was in full swing. An American smart set had been organized on the British and French models, especially upon the British model. It bought its clothes in Paris. It did its shooting on the moors of Scotland. It attended the races at Ascot and Epsom. It drank and gambled in London, and played tennis and golf and polo at the country places in the shires. Then it brought this sporty life with all of its extravagances over to Puritan America. At first, staid American society looked upon

these innovations askance, but the introducers of them were rich, and they clanned and intermarried with each other, and became richer thereby, and set the tone, and soon many were following in a vigorous effort at social climbing.

Such, I do not hesitate to assert, is the smart society of the eastern cities of the United States today. It has become a power in the land and it wields its power mercilessly. It assumes to dictate the social standing and the social scale and woe to the social climber who displeases it. It does not hesitate to break intellectual independence and integrity by rigid boycott and ostracism. The intolerance of this Anglomaniac set has taken the place in American society of the religious intolerance which sent Roger Williams to Rhode Island and Emerson to Concord, and of the political intolerance which made the brilliant Wendell Phillips a hermit in the so-called Athens of America. "British by descent and French in manners," is its favorite boast. Like all imitations it outdoes

the original. It is more British than the British, more French than the French. It regards this great war as its own. It denounces anyone who is not pro-British or pro-French as pro-German. Simply pro-American is an ignored status. It cannot take time from its pleasures to go deeper than the head-lines of pro-Ally newspapers, and it waxes wroth over Prussian militarism, Belgian neutrality, and Hun atrocities. It has never yet manifested the slightest consciousness of the deep underlying causes of the war nor of the great purposes the war may be intended to subserve. It thinks it has an opinion, but it really has only prejudices and sympathies. It can never be made to see otherwise than it saw at the first superficial glance. It does not know the difference between a great epoch-making world-revolution and a cock fight.

The second element in the explanation is the journalistic. At the New Year's reception of the year 1905 in the palace of Frederick the Great on the Spree in Berlin,

the German Emperor is reported to have said to Mr. Charlemagne Tower, Ambassador of the United States at his court, that it was his earnest wish to establish closer cultural relations between Germany and the United States by means of an exchange of educators between the universities of the two countries. Mr. Tower immediately made known the Emperor's proposition in a way which brought it to the notice of the authorities of the American universities, and two of the most prominent among them, Harvard and Columbia, immediately took it up and, in the course of the year 1905, entered into arrangements with the Prussian ministry of education for its realization. During the academic year 1905-6, a representative of American philosophy from Harvard University taught in the University at Berlin and a representative of German science taught in the University at Cambridge, and in the year 1906-7, representatives from both Harvard and Columbia taught at Berlin and representatives of German science and philosophy

taught at both of these American institutions. When the representative from one of these, as I am informed, passed through London on his way to Germany he had an extended conversation with one of the chief British statesmen on the subject of these exchanges of educators between the German and American universities, and found that they were regarded by him with disfavor. The American scholar assured the Briton that they had no political significance, that they were purely scientific in purpose and that the American universities and, as he understood, the German universities also were desirous of establishing the same kind of exchanges with the universities of other countries for the advancement of science and culture. This assurance did not seem to satisfy the Briton, not even though he himself was invited to go to America and lecture to the university students on British institutions. Moreover, when the American scholar inaugurated his course of instruction at the Berlin University, his lecture was subjected

to a sharp criticism by the London *Times* and other prominent British journals and the British public became thus fully informed of the new cultural bond which had been established between the higher institutions of learning of Germany and of the United States.

During the following year there appeared in the United States one of the most noted journalists and newspaper proprietors of Great Britain and it was said, and has been constantly reiterated, that, during his sojourn in the United States, he acquired the controlling interest in a considerable number of leading journals. Was this the answer which Great Britain made to the exchange of educators, the exchange of scientific inquiry between the German and American universities? Read in the light of subsequent events, it seems quite possible. It, at least, corresponds rather closely with the characteristics of the people concerned — the work of the laboratories of science, on the one hand, and of the sensational, superficial daily press

with its misleading head-lines, on the other. From that day to this the British influence and control over a large part of the press of the United States have apparently increased until it is now difficult to find many American newspapers which are exempt from the same or which do not follow in the train of those subject thereto. You could almost count them on the fingers of one hand in that part of the country lying along the Atlantic seaboard. The pro-British American press, thus created and expanded, has out-heroded Herod in its employment of the weapons of mendacity, hypocrisy, and personal abusiveness, and had at one time very nearly succeeded in silencing the expression of all anti-British opinion. Its intolerance has been, from the outset, so extreme as to arouse astonishment as well as indignation on the part of all sincere upholders of the freedom of thought and expression. It has, however, intimidated, not only the masses, but all persons higher up who have their opinions, as their clothes, made for them according to the

cut and style of the day. This is, however, the usual phenomenon of transition periods. Only profound minds fathom the nature of what is coming. To the superficial, and it is a generous estimate of the intellectual power of most men and women to class them so highly, any change from the existing order, anything different from that to which they are accustomed, is frightful. The man who can discern the new in the making is a lonely man, and, if he dare indicate it to others, is generally a hated man. Newspapers are not printed for the lonely man, and their owners rarely have the courage to stand by the hated man, no matter whether he be right or wrong.

The third element in the explanation is the financial. At the outbreak of the war the trade and commerce of the United States with the German and Austro-Hungarian Empires were almost as great as that with Great Britain and all her colonies and was rapidly increasing. Almost in a day that trade was practically annihilated and American finance was threatened with catastrophe. Then be-

gan the increase of trade with Great Britain and her allies for war purposes, not only in arms and munitions, but also in provisions, horses, vehicles, and even manufactured articles usually made in those countries for themselves. In less than a year the United States had become the chief base of supplies for the allied Colonial Empires in their attempt to crush the states of middle Europe and grasp the trade of the whole world. The prosperity felt by this turn in trade relations in the United States was confined, indeed, to the relatively few. The great mass of consumers were unfavorably affected by it, through the rise in the prices of commodities and in the derangements of ordinary labor and domestic service. Still, a considerable proportion of the population participated, and continue to participate, in it. Then came the further identification of the financial interests of the money-lending class with the cause of Great Britain and her allies through the vast loans floated here without security.

At the beginning of the war the administra-

tion at Washington took the ground that the loan of money to a belligerent government either by a neutral government or the citizens or subjects thereof was an unneutral act. But later on, when British exchange fell very low and Great Britain and France asked for a loan to pay for the supplies they were purchasing here, the Washington administration withdrew its objection. At first it was supposed that the borrowing Governments intended to offer collateral in the shape of stocks, bonds, and mortgages held in Great Britain and France upon properties situated in the United States. But the British and French commissioners soon let it be known that they had come with no such authority or purpose. They talked haughtily about the promises of their Governments being sufficient guarantee for the payment of any sum they might ask for and virtually bullied a syndicate of bankers into taking the unsecured promises of the British and French Governments for a loan of five-hundred millions of dollars, only the half, however, of what they

demanded. Their object was not simply to get the money, but also to bind up, at that stage of the war, the financial interests of the lenders with the military fortunes of Great Britain and her allies. It was their object, further, to save up the United States securities owned in Great Britain and France as a basis for further loans, which they foresaw might not be forthcoming without such collateral. They knew they could always get money in this way, and that the United States securities thus hypothecated would be withdrawn from the danger of sequestration, for the payment of the great original loan without collateral, by action of the government of the United States forbidding the payment of interest or principal to the holders in Great Britain and France. The holders of the original five-hundred million dollar loan would, thus, be more and more closely bound to the military fortunes of Great Britain and her allies, and Great Britain and France would come finally into a position where they could repudiate this loan, if they should

choose to do so, without risking the property of their Governments or their subjects in American securities.

Now add to all these considerations the facts that the great majority of the people of the country understand only the English language, or at least do not understand the German language, and that almost all the news we get from Europe passes through the hands of the British censor and is manipulated by him in such a manner as to bring down the disfavor of the neutral world upon Great Britain's enemies, and you have the main causes of the blindness of a large number of American citizens to the great and solemn fact that this country, in the aid it is giving the Colonial Empire Trust in its struggle to perpetuate and extend itself against the international principles of the twentieth century, is helping to build up a Frankenstein for its own lasting injury.

The great mass of the plain people, however, have not been subject to the social and financial influences above described and the

violent and at times incoherent ravings of the pro-British press have rather served to arouse in them a suspicion of falseness and hypocrisy. Our plain citizens of German and Austrian and Irish descent, and that is very nearly the half of our entire population, either know the truth or are willing and anxious to learn it, and no small proportion of our citizens of English descent still remember the hardships and sufferings of their forefathers in the winning of our freedom from British rule and the lessons of our history in maintaining it. I verily believe that if a resolution to stand by the Colonial Empire Trust in this great struggle were, after three months of free discussion, submitted to the voters at the ballot box, it would be voted down by a majority of three to one.

For let us consider for one moment what, if peace were made tomorrow, would be its probable terms and conditions. They ought to be, viewed from the standpoint of twentieth century requirements, as follows:

1. The freedom of the seas.

2. The inviolability of private property upon the high seas in time of war as well as peace.

3. The independence of all colonies capable of self-government.

4. The holding of all other colonies as a trust for the world and, therefore, the maintenance of the open door in them to trade with all the world upon the same conditions as with the motherland.

5. The independence of Poland.

6. The relinquishment of Belgium and the occupied districts of France for the independence of Ireland.

7. The organization of the Balkan populations under the hegemony of Austria-Hungary and Bulgaria, so as to put an end to the machinations of Russia therein through the agency of the Servian, Montenegrin, Albanian, and Macedonian adventurers.

8. The economic as well as political regeneration of the Ottoman empire; and,

9. The integrity of China and the open door to the trade of all nations therewith.

In the congress of the states of the world assembled for the settlement of the results of the great revolution now in progress, the Colonial Empire Trust would, if true to its proclaimed principles and to the provisions of the agreements between its members, resist to the utmost every one of these propositions, while Germany and her allies would stand for every one of them. Is there any question upon which side the United States of America would throw its influence and its vote? I think not. Our way would be as plain to us as a turnpike road, as Mr. Lincoln used to say, and is prescribed by our original principles and our traditional policy. If our country should fail to support these propositions, we would be false to our origin, false to our history, false to our interests, and false to the welfare of mankind, for this is the road to peace with justice and progress and ever advancing civilization.

All the artificial schemes for the enforcement of international peace upon the basis of the *status quo* will prove in vain. New

nations are bound to arise in the world's development and demand their "places in the sun," and, if the international scheme of the world does not allow their acquiring it peaceably it will be done by force. The key to the situation is economic freedom and equality rather than political and territorial statics. When the principle of the open door to trade and commerce throughout the world becomes thoroughly established, then will the "bearing of the white man's burden" become altruistic in reality and not a hypocritical subterfuge for tyranny, and the nations of the world will be quite willing to divide the burden without fighting over it.

Perhaps we may now venture an answer to the question, "When and how will this war end?"

It will end *with* the attainment of the world system of the twentieth century above delineated, and will end *when* that shall have been accomplished. It may stop momentarily before then. It is possible that Germany and her allies may spend their strength in the

effort to break the world system of the Colonial Empire Trust and that, in consequence of it, this system will be riveted down upon the world, for a time, more rigidly than ever before. That will only mean, however, that the center of resistance to it will be transferred from Middle Europe to North America, and that the United States must become the nucleus around which the other nations standing for the international principles of the twentieth century will group themselves in the last great struggle to free themselves from the withering grasp of the Colonial Empire system.

It may be that we shall have to make this sacrifice for having suffered plutocratic interests to mislead us into giving aid and comfort for the maintenance of a system which is the greatest possible enemy to our international safety and prosperity. It may be that we may yet be obliged to bear this burden for the world. It is to this end, therefore, that we should direct our new born enthusiasm for "preparedness." Down to

this moment it has expended itself chiefly in parades and speeches and dinners and receptions for mutual congratulations on the success of the show. It has been groping about, because it has not recognized its aim, its means, or its *enemy*. When it realizes that the Colonial Empire system, in its present form of a gigantic combination between the four great Powers composing it for controling and monopolizing the world's trade and commerce and with its present principles of exploitation and preferential discriminations is the enemy against which it must prepare its defense, then it will be able to act intelligently and, it is to be hoped, effectively. This would certainly signify that the United States should have a vast navy, one able to maintain our rights in trade and travel against any and all other Powers, in time of war as well as peace, and with equal promptness and decisiveness.

But we must have a great deal more than that. We must have a national morale based upon a philosophy of duty to the state, so

just and rational as to become a universal creed and then a universal custom. We must have a Government so honest, so efficient and so patriotic, that, in time of storm and stress, the people and every individual of the people will be ready to hand over their all to its keeping for a redistribution, which would secure to all the means of living without luxury, on the one side, and without want, on the other. And we must have such a system of liberty as will not lead to the plutocracy and the proletariat, but to a genuine economic democracy. Naval power and military power will not be sufficient for our defense against such an enemy to our rights and prosperity as threatens us in the Colonial Empire system and the Colonial Empire combination without these other elements of preparedness. Without these, ships and cannon and battalions and rifles and sabers and all other munitions are but arms and hands without the brain to direct them aright or the force of will and character to make them decisively effective.

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